

*Cheltenham Township, believing that public input is appropriate on any items coming before the Commissioners, will recognize any citizen wishing to address a specific item prior to the vote on that issue. In order to be recognized, please raise your hand.*



## **AGENDA**

### **COMMISSIONERS' MEETING**

**Wednesday, June 18, 2014**

**Curtis Hall**

**7:30 p.m.**

1. Pledge of Allegiance.
2. Roll Call.
3. Approval of the Board of Commissioners' Regular Meeting Minutes dated May 21, 2014.
4. Acceptance of the Executive Summary Financial Report of the Manager/Secretary for the month of May, 2014.
5. Acceptance of the Accounts Paid Report for the month of May, 2014.
6. Presentation to the Board of Commissioners by members of Cheltenham Little League.
7. Presentation of Community Service Awards to Sgt. John Slavin and Officer Jeffrey Murphy for service beyond the call of duty at the Annual Glenside Festival of Arts.
8. Presentation of a Community Service Award to Liam Duncan in recognition of his attainment of the rank of Eagle Scout.
9. Recognition of 2014 Sustainable Cheltenham Award recipients.
10. Review of the Public Works Committee Regular Meeting Minutes dated June 11, 2014.
  - a. Award of a Contract for the 2014 Road Milling and Resurfacing Project
  - b. Concurrence with a Montgomery County Consortium Contract for Furnishing Street Sign Post and Material Unit Prices.
  - c. Award of Contract for John Russell Circle South Community Development Block Grant Road Reconstruction Project.
  - d. Adoption of a Resolution authorizing the filing of a grant from the Department of Community and Economic Development for the construction of the Interceptor 2A/2B/3 and portion of 4 replacement.
  - e. Approve a Change Order for additional site inspection services for the Interceptor A – Sanitary Sewer Lining Phases 1A and 1B.
  - f. Approval of Ownership Transfer Agreement for the Forrest Avenue Bridge Project.
  - g. Adoption of a Resolution authorizing the Application of a Growing Greener for year 2014-15 Grant.
  - h. Award of a Contract for Janitorial Services.
  - i. Approval to enter into an Intermunicipal Wastewater Service Agreement with Jenkintown Borough (see attached).
  - j. Consider scheduling a Public Hearing on Wednesday, September 17, 2014 to consider an Ordinance establishing a new Chapter 175 to the Code, entitled "Local Landmarks" providing criteria for the preservation of local landmarks (see attached).

AGENDA – BOARD OF COMMISSIONERS’ MEETING

June 18, 2014

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- k. Consider scheduling a Public Hearing for Tuesday, August 5, 2014 to consider an Ordinance pertaining to the former Dominican Retreat House property located at 1750 Ashbourne Road, Elkins Park, to allow for its adaptive reuse, rezoning of the property to the M4 Zoning District, and amending the subdivision and land development Ordinance to provide consistency and a change of the Township’s zoning map to reflect said change (see attached).
- 11. Review and acceptance of the Public Safety Committee Regular Meeting Minutes dated June 4, 2014.
  - a. Adoption of an Ordinance amending the Code, Chapter 285, thereof, entitled “Vehicles and Traffic”.
- 12. Review and acceptance of the Public Affairs Committee Regular Meeting Minutes dated June 4, 2014.
- 13. Review and acceptance of the Building and Zoning Committee Regular Meeting Minutes dated June 4, 2014.
- 14. Review and acceptance of the Parks and Recreation Committee Regular Meeting Minutes dated June 11, 2014.
  - a. Award of a Professional Services Contract for Engineering and Design of the Tookany Creek Trail (Phase III).
  - b. Approval of a Change Order for the Curtis Arboretum Landscape Master Plan.
  - c. Award of a Professional Services Contract for preparing plans and bid specifications for a new roof at the Rowland Community Center.
  - d. Adoption of a Commercial and Video Filming Permit in Township Parks.
- 15. Review of the Sinking Fund Commission Regular Meeting Minutes dated May 28, 2014.
  - a. Adoption of a Debt Management Policy.
- 16. Old Business.
  - a. Update on issues with dangerous dogs in the vicinity of Ashbourne and Rolling Green Roads.
- 17. New Business.
- 18. Citizens’ Forum.
- 19. Adjournment.

  
Bryan T. Havar  
Township Manager

**WASTEWATER SERVICE AGREEMENT**  
**BETWEEN CHELTENHAM TOWNSHIP AND JENKINTOWN BOROUGH**

The Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, ("Effective Date") by the Township of Cheltenham, Montgomery County, Pennsylvania ("Cheltenham") a body corporate and politic organized under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 8230 Old York Road, Elkins Park, Pennsylvania, and the Borough of Jenkintown, Montgomery County, Pennsylvania, ("Jenkintown"), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 700 Summit Avenue, Jenkintown, Pennsylvania 19046 (collectively referred to as the "Parties").

**BACKGROUND**

**WHEREAS**, Cheltenham owns and operates wastewater collection and conveyance facilities providing service to convey Wastewater ("Wastewater Conveyance Services"); and

**WHEREAS**, the Parties have entered into prior Wastewater Agreements whereby Cheltenham agreed to provide Jenkintown with Wastewater Conveyance Services; and

**WHEREAS**, the Parties are subject to revised conditions contained in the Agreement between Cheltenham and Philadelphia; and,

**WHEREAS**, the Parties desire to rescind all previous Agreements prior to the effective date of the Agreement; and

**WHEREAS**, a revised Agreement between Cheltenham and Jenkintown is required in order to update the regional PA Act 537 Sewage Facilities Plan; and

**WHEREAS**, Jenkintown desires to continue to procure Wastewater Conveyance Services from Cheltenham to ensure conveyance to the City of Philadelphia ("City") for wastewater treatment for Jenkintown; and

**WHEREAS**, the Parties desire to enter a new Wholesale Wastewater Agreement, which shall address, but is not limited to, Jenkintown's Flow Limits at its Points of Interconnection with Cheltenham's Conveyance System, Conveyance Fees, Pass-Thru City Wastewater Treatment Fees, Exceedance Fees, and Management and Administration Fees.

**WHEREAS**, Cheltenham may at times be managing a Corrective Action Plan ("CAP") mandated by the Pennsylvania Department of Environmental Protection ("PADEP"), which requires Cheltenham to maximize the conveyance capacity in its sanitary sewer system and to minimize the volume and duration of discharges from Sanitary Sewer Overflows ("SSOs"), and a Connection Management Plan ("CMP") mandated by PADEP, which defines and restricts the number of new connections to its sanitary sewer system; and

**WHEREAS**, Cheltenham, in order to eliminate and prevent SSOs, must limit the inflow and infiltration from sanitary sewer systems within Cheltenham and from its tributary customers, including Jenkintown; and

WHEREAS, Cheltenham desires to provide and Jenkintown desires to utilize Wastewater Conveyance Services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

## I. DEFINITIONS

For the purposes of this Agreement, the following terms and phrases shall have the following meanings:

- A. Act 537 Plan: A comprehensive plan for the provision of adequate sewage systems adopted by a municipality or municipalities possessing authority or jurisdiction over the provision of the systems, and submitted to, and approved by, the PADEP, as required by the Pennsylvania Sewage Facilities Act.
- B. BOD<sub>5</sub> – Biochemical Oxygen Demand: The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Celsius, expressed in terms of milligrams per liter (mg/l)
- C. City: City of Philadelphia
- D. Days: Days shall be Calendar Days.
- E. DRBC: Delaware River Basin Commission.
- F. EDU: Equivalent Dwelling Unit, equal to 262.5 gallons per day.
- G. Effective Date: The date that this intermunicipal Agreement is fully executed.
- H. EPA: United States Environmental Protection Agency.
- I. Fiscal Year: A fiscal year shall be the year beginning on January 1<sup>st</sup> of any given year and ending on December 31<sup>st</sup> of the same year.
- J. Flow Limit: The maximum amount of Wastewater that may be discharged by Jenkintown to Cheltenham as measured in Millions of Gallons per Day (“MGD”) and/or Cubic Feet per Second (“CFS”) for treatment as specified in Exhibit 1.
- K. Flow Exceedance: The condition in which sewage flow through any point of connection exceeds the Flow Limit at that point of connection.
- L. Industrial User: Any person that introduces an indirect discharge regulated under the Clean Water Act, state or local law to the POTW.
- M. Loading Limits: The maximum Biochemical Oxygen Demand (“BOD<sub>5</sub>”) and Total Suspended Solids (“TSS”) loadings that may be discharged to Cheltenham’s conveyance system and the City for treatment.

- N. NEWPCP: Northeast Water Pollution Control Plant.
- O. Non-domestic User: Commercial, industrial or municipal users who discharge to the POTW.
- P. PADEP: Commonwealth of Pennsylvania Department of Environmental Protection
- Q. PCB: Polychlorinated Biphenyls.
- R. Prohibited Exceedance: Any exceedance of the Flow and/or Loading Limits established in this Agreement and Exhibits.
- S. POTW – Publically Owned Treatment Works. The treatment works, as defined by Section 212 of the Clean Water Act (33 U.S.C. 1251), which is owned by the City, including any devices and systems used in the storage, treatment, recycling, or reclamation of municipal sewage and industrial waste. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewer or other conveyances not connected to a facility providing treatment. POTW shall also include any sewers that convey wastewater to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.
- T. Significant Industrial User ("SIU"): (1) any Industrial User subject to any national Categorical Pretreatment Standard; or (2) any Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow-down wastewater) or contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3) any Industrial User that is found by the City, PADEP, or EPA to have a reasonable potential, either alone or in conjunction with other discharges, to adversely affect the POTW, the Collector system, the Solid Waste By-Products of the POTW, or air emissions from the POTW.
- U. TSS: The total suspended matter that floats on the surface of, or is suspended in water, wastewater or liquids, and which is removable by laboratory filtering expressed in terms of concentration (milligrams per liter (mg/l)).
- V. Wastewater: The liquid waste and associated by-products conveyed by a sewer and may include domestic, commercial and industrial discharges.

## II. TERM

- A. This Agreement shall become Effective on the Date this Agreement is fully executed and shall continue in force and effect unless terminated earlier as provided herein, through and until June 30, 2025 at which time it shall expire.

- B. Either Party shall have the right to terminate this Agreement as per terms and conditions of PADEP, for "cause" at any time, but only after twelve (12) months written notice. "Cause" shall mean:
- (1) Continuing exceedances of any of the Flow Limits contained in Exhibit 1, attached hereto and fully incorporated by reference. However, as long as Jenkintown remains in full compliance with Section III, Paragraph C, the Borough's existing exceedances shall not be deemed "cause" under this paragraph".
  - (2) Failure by Jenkintown to meet its financial obligations under this Agreement for a period of three (3) consecutive billing periods.
  - (3) Failure by Either Party to comply with a final decision or determination of an Arbitration Panel or court of competent jurisdiction rendered under this Agreement within three (3) months of the date the decision or determination became final, unless otherwise specified by the Arbitration Panel or court competent jurisdiction.
  - (4) Failure by Cheltenham to provide conveyance and treatment access as provided in this Agreement.

### III. SCOPE OF SERVICES/WASTEWATER LIMITS

- A. Quantity: Cheltenham shall convey all wastewater and its by-products delivered by Jenkintown from approved points of interconnection identified in Exhibit 1 of this Agreement.
- B. Flow and Loading Limits: The wastewater delivered by Jenkintown to Cheltenham shall not exceed the Flow Limit as set forth in Exhibit 1 of this Agreement ("Flow Limit"). Any BOD and/or TSS exceedances noted by the City, upon determination of the source, will be allocated to, and paid for, by the source whether Cheltenham, Jenkintown, Abington and/or City, in proportion to the source's exceedance of the total BOD and/or TSS exceedance noted by the City. If the source is not determined, the BOD and/or TSS exceedance shall be paid for by Cheltenham, Jenkintown Abington and City in proportion to the flow allocation percentages and locations set forth in Exhibits 2A and 2B attached hereto.
- C. Prohibition on Discharges that Exceed the Flow Limit:
- (1) Jenkintown's wastewater flow from each point of connection shall not exceed the corresponding Flow Limit for the connection point as set forth in Exhibit 1 of the Agreement. In the event Jenkintown exceeds any of its Flow Limits, no sewer extensions or modifications that will cause or contribute to an exceedance of Jenkintown's Flow Limits shall be permitted without the prior written approval of Cheltenham unless required by a regulatory agency with jurisdiction or contained in an approved CMP. Jenkintown shall be responsible for all of Cheltenham's

costs and damages caused by Jenkintown's exceedances of the stated Flow Limits.

- (2) Within sixty (60) days of the effective date of this Agreement Jenkintown shall submit a report to Cheltenham detailing the inflow and infiltration ("I/I") reduction work performed in the Borough, future planned I/I work, and a schedule for implementation; and within sixty (60) days of any request for such issued in writing by Cheltenham, Jenkintown shall develop and implement an I/I reduction program, which will employ I/I reduction technologies and implementation of I/I reduction strategies consistent with Cheltenham's Corrective Action Plan ("CAP") mandated by PADEP.
  - (a) If, notwithstanding the implementation of the program under Section III.C(2), Jenkintown is exceeding its Flow Limit and/or Loading Limits, a report shall be submitted to Cheltenham within sixty (60) days of notice that Jenkintown is exceeding its Flow and/or Loading Limits which includes a description and proposed timeline for an I/I reduction program in the Tookany Basin within Jenkintown. The report shall address the reasons for the flow exceedance(s), level of exceedance(s), corrective action(s) to eliminate the exceedance(s), milestone dates for each corrective action to eliminate the exceedance(s) and flow data from remedied areas, including additional flow metering if reasonably needed. A quarterly update shall be submitted to Cheltenham by the fifteenth day of the month following the end of the quarter.
- (3) Within thirty (30) days of receipt of the report referred to in section III C (2) (a), authorized representatives of Jenkintown and Cheltenham shall meet to discuss the content of Jenkintown's I/I reduction program, including any revision to be required to conform with Cheltenham's Corrective Action Plan prior to implementation of the program. Unless Cheltenham submits written amendments to the program to Jenkintown no more than forty-five (45) days after the meeting, the I/I reduction program shall be deemed to be approved.

If Cheltenham is subject to charges by the City for failure to submit a written plan of action to eliminate prohibited exceedances and Jenkintown has exceeded its Flow Limits during any part of the time period the prohibited exceedances occurred, then Jenkintown will pay as follows:

- (4)
  - (a) If neither municipality submits a plan to the City which is approved, or if a joint plan developed by both municipalities is not approved by the City, Jenkintown shall pay its share of the charges imposed by the City corresponding to the ratio of Jenkintown's exceedance of its Flow Limit to the total amount of prohibited exceedances for which notice has been provided by the City; or,
  - (b) If only one municipality fails to submit an approvable plan, that municipality shall be responsible for the full amount of the charges to the City. Should Jenkintown and Cheltenham agree to challenge such charges imposed by the City, all legal costs and attorneys' fees will be apportioned to each municipality in accordance with the ratio of each municipality's

respective exceedance of its Flow Limit to the total amount of prohibited exceedances for which notice has been provided by the City.

- (5) In the event of a Flow Exceedance by Jenkintown, nothing herein shall require Cheltenham to certify the availability of, and/or make available, conveyance capacity within the Cheltenham sanitary sewer system for Jenkintown for additional connections, except as provided under a PADEP Connection Management Plan (CMP), until Flow Exceedance have been eliminated, or abated sufficiently for PADEP to approve each connection. If PADEP proposes to restrict or expand EDUs for Cheltenham by way of a CMP, Jenkintown shall be included in all such discussions with PADEP. Provided Jenkintown is not exceeding its Flow Limits, in the event that EDUs to Cheltenham are increased via a CMP, Cheltenham shall assign a share of the EDUs approved by PADEP to Cheltenham, Jenkintown, and Abington in proportion to each party's cost sharing percentage, except for EDUs released due to specific I & I reduction as the result of work performed and/or financed by a particular party or parties; provided, however, if allocation by PADEP is a requirement of the release of EDUs under a CMP, then the allocation need not be made unless PADEP approves it.
- (6) Under no circumstances whatsoever shall the additional flow from any new or enlarged sanitary sewer, should such be built by Jenkintown, cause or contribute, by virtue of its flow exceedance, to the unpermitted discharge of sewage from anywhere within Cheltenham or the City.

D. Exceedance Charges:

Exceedances of Jenkintown's Flow Limit can cause serious environmental and operational problems for Cheltenham. Exceedances can cause localized sections of Cheltenham's sewer system to become surcharged and result in unpermitted discharges of sewage within Cheltenham. Exceedances can increase or contribute to the volume and duration of SSOs contrary to Cheltenham's CAP and CMP. Exceedances can cause operational and maintenance issues, as well as make future sewage facilities planning much more difficult. Finally, such exceedance can result in, or contribute to, Cheltenham being required to significantly increase its capital and operating expenditures, pay significant environment fines, and/or pay Exceedance Charges to the City as per Cheltenham's Agreement with the City.

Therefore, to ensure exceedances of Flow Limits will not occur, Cheltenham imposes Exceedance Charges on its Wastewater Conveyance Services customers. Should Jenkintown exceed any of its Flow Limits contained in Exhibit 1, Jenkintown shall pay Exceedance Charges, as set forth below, in full, as part of their next billing statement.

Any exceedance charges which Cheltenham chooses to advance to the City for Jenkintown flow exceedances by Jenkintown will be reimbursed to Cheltenham by Jenkintown. Such charges shall be paid in accordance with the charge formula in place for Cheltenham exceedances into the City. Any flow exceedance by Jenkintown for which no exceedance charge is paid by Cheltenham to the City shall

be assessed flow exceedance charges as follows: for each 30 minute period recorded flow rate where the 30 minute average flow at any point of connection exceeds the Flow Limit for that point of connection as set forth in Exhibit 1, Jenkintown shall pay Cheltenham \$110 for each CFS of exceedance or portion thereof.

During 2015, and for each calendar year thereafter, the Exceedance Charges stated above will be adjusted in accordance with the changes in the Consumer Price Index for the prior calendar year, upon the availability of the Consumer Price Index for January of each subsequent year. The index to be used for this adjustment shall be the Consumer Price Index published by the U.S. Bureau of Labor Statistics for all urban consumers ("CPIU") for the Northeast region of the U.S., all items.

These Exceedance Charges provisions continue in full force and effect for as long as Cheltenham provides Wastewater Conveyance Services to Jenkintown. Exceedance Charges shall not be assessed, however, for those storm events that are so severe that the PADEP has waived fines and penalties across the region for such events, where such fines are waived by PADEP for both Jenkintown and Cheltenham.

- E. Certification of Sewer Capacity. Cheltenham, in its sole, absolute and complete discretion, may determine that Cheltenham does not have adequate sewer capacity to permit additional sewer connections to any part of Jenkintown's system that will discharge to Cheltenham if Jenkintown has exceeded a Flow Limit set forth in Exhibit 1 and has failed to comply with Section III C (6) (c) or failed to submit an appropriate Corrective Action Plan as provided under Section D of this Agreement.
- F. Polychlorinated Biphenyls Minimization. DRBC's Water Quality Regulation and Water Code Section 4.30.9 require the City to implement a Pollutant Minimization Plan ("PMP") at its Northeast Water Pollution Control Plant ("NEWPCP") to reduce its contribution of PCBs to the Delaware Estuary. As a system contributing wastewater to the City, Cheltenham must comply with this requirement. In order to insure Cheltenham's compliance with this requirement, Jenkintown shall:
- (1) Within ninety (90) days of the Effective Date of this Agreement, supply the City and Cheltenham with complete information regarding PCBs sources within Jenkintown that can potentially be discharged to sanitary sewers or are present in wastewater conveyed by sanitary sewers.
  - (2) Provide to the City and Cheltenham an annual update regarding PCB sources within Jenkintown that can potentially be discharged to sanitary sewers or are present in wastewater conveyed by sanitary sewers for City's annual PMP report. The update shall be submitted at least thirty (30) days prior to the due date of City's report to DRBC.
  - (3) Implement any and all new and/or more stringent PCB requirements or reductions that may be imposed upon the City's NEWPCP. Jenkintown agrees upon sixty days' advance notification, to implement these requirements simultaneously with the City's implementation of these new requirements.
  - (4) Accept a not-to-exceed a numeric limit for PCB discharge into the NEWPCP which shall be consistent with Jenkintown's proportionate flow into the

NEWPCP in both dry and wet weather situations in the event a numeric limit for PCBs is imposed upon discharges from the City's NEWPCP.

- (5) Upon request by the City and/or Cheltenham, implement a PMP throughout the entire drainage area of Jenkintown that contributes flow to the NEWPCP through Cheltenham in order to achieve that maximum practicable reduction, as defined in DRBC's regulation, of PCBs into the NEWPCP.

#### IV. BILLING, PAYMENTS AND CHANGE IN RATES

- A. Cost of Treatment. Jenkintown shall pay its share of the cost of treatment of wastewater at the City's facilities as charged by the City per Section IV.A.(1) below and as allocated by Cheltenham in proportion to Jenkintown's wastewater capacity in accordance with generally accepted wastewater rate methodologies; provided, however, that if any of Jenkintown's points of connection listed in Exhibit 1 are surcharging, Jenkintown shall also pay treatment charges for the amount of the surcharge.
  - (1) Treatment charges to be paid by Jenkintown shall be in proportion to Jenkintown's capacity (in addition to payment for treatment charges for any surcharging as referred to in Section IV.A. above) consisting of the Annual Lump Sum charge, the actual cost of the volume charge, the actual cost of the capacity charge, the actual cost of the BOD and TSS charges, and management fees of twelve percent (12%) of all of the foregoing as allocated by Cheltenham in compliance with this Agreement.
- B. Operation and Maintenance Charges. Jenkintown shall pay to Cheltenham a portion of the cost of maintaining and keeping in repair the sewer systems of Cheltenham and the City used by Jenkintown, said cost to be apportioned in accordance with the following formula:  $(\text{costs of repair and maintenance}) \times [(\text{allocated capacity from Jenkintown at point of connection to City}) / (\text{total capacity at point of connection of Jenkintown to City})]$ . Cheltenham shall present to Jenkintown as part of the quarterly bills sent to Jenkintown by Cheltenham throughout the year, a statement of the cost of maintenance and repairs and Jenkintown's share thereof in accordance with the formula set forth in this Sub-Section B. Examples of sewer system maintenance and repair include point repairs, televising and grouting, and flushing.
- C. Capital Improvement Charges. If it is determined at any time in the future that an upgrade, new conveyance system, or appurtenances are necessary within the interceptor transporting Jenkintown's wastewater flows within Cheltenham or the City, and the project conveys or affects Jenkintown's wastewater flow, then Jenkintown shall be responsible for its pro-rata share of the construction costs for such in accordance with its cost sharing percentage based on Exhibit 1, including, but not limited to, engineering, permitting, financing, flow evaluation, I&I reduction effectiveness and design services cost of the project. Each year, beginning with the year 2014, Cheltenham agrees to inform Jenkintown of any such projects proposed for the following year and agrees to submit to Jenkintown an engineer's report to include an estimate and project schedule during preliminary design and again during

final design by September 15 of the given year. Jenkintown has thirty (30) days to respond and comment. Cheltenham and/or its engineering consultant shall provide a cost allocation analysis which defines Jenkintown's share of construction costs including, but not limited, engineering, permitting, financing, flow evaluation, I&I reduction effectiveness and design services cost of the project to Jenkintown in accordance with the formula set forth in this paragraph.

- D. Fines. If at any time Cheltenham should experience an SSO within the Conveyance System in which it serves Jenkintown, and it is demonstrated that wastewater flows from Jenkintown were in exceedance of its Flow Limit and contributed to the SSO, Jenkintown shall be responsible for its proportionate share of the cleanup and any fine associated with the SSO event that are levied by PADEP and/or EPA. Such allocation shall be determined by the Cheltenham Engineer. If any party does not agree with the allocation of cost shares, Jenkintown shall pay its share, as allocated by the Cheltenham Engineer, to Cheltenham if and when Cheltenham is called upon to make payment and such disputing party shall resort to the dispute resolution procedures set forth in Section VIII following payment. Jenkintown shall pay its share based on its exceedance of its Flow Limit all exceedance charges imposed by the City, if any, in addition to any sewage flow quantities for which it pays fines or cleanup costs.
- E. Long Term Control Plan of City. Jenkintown agrees to pay Jenkintown's share of all capital projects and all operation and maintenance expenses, depreciation, and return on investment for the capital portion of the Long Term Control Plan ("LTCP") costs necessary for the City to comply with and implement the City's LTCP throughout the City of Philadelphia in accordance with the applicable table(s) labeled "Maximum Allowable Flow 18 CFS\*" and "Maximum Allowable Flow 29 CFS\*" in Exhibit 1 and "Percent Contribution Calculations" set forth in Exhibit 2A and the "Percent Contribution Map" set forth in Exhibit 2B attached hereto. Therefore, facilities allocated to Jenkintown for which Jenkintown agrees to pay its proportionate share of capital projects and all operation and maintenance expenses shall include both those facilities related to the City's POTW as well as those facilities necessary for the City to comply with and implement the LTCP throughout the City of Philadelphia.
- F. Review. Jenkintown shall have the right, upon written request, to review Cheltenham's method of computing the charges for, and allocating the cost of providing to Jenkintown wastewater conveyance through Cheltenham and treatment services by the City. Such review shall be subject to the provisions to Notice of Changes in rates (Section IV G).
- G. Expansion of City Sewer Line. Jenkintown agrees to pay Jenkintown's share of the costs associated one of the following options: (1) a new sewer line within the City or (2) an equalization tank or tanks to accommodate the 29 CFS or (3) a pump station with force main within the City as more fully provided in the Agreement between the City and Cheltenham Township. Jenkintown shall be responsible for paying its share of only one of the above mentioned options and shall do so in accordance with the applicable table(s) labeled "Percent Contribution Calculations" set forth in Exhibit 2A and the "Percent Contribution Map" set forth in Exhibit 2B attached hereto. The costs that are eligible to be shared shall include design (including, but not limited to, flow evaluation and I&I reduction effectiveness), financing, permitting, constructing and

maintenance. Upon the completion of construction and commencement of operations of any one of the options described above, Jenkintown's maximum allowable flow limit will be increased to the "Maximum Allowable Flow, 29 CFS\*", as set forth in Exhibit 1.

H. Billing.

- (1) Jenkintown shall provide Cheltenham with quarterly wastewater flows in CFS and computation by the 15<sup>th</sup> of the month following the end of the quarter. If the City determines that BOD and TSS from Cheltenham has upset the treatment process, then Cheltenham will review quarterly records to assist with determining a possible source.
- (2) Cheltenham shall render bills to Jenkintown on a quarterly basis for the charges set forth in this Agreement. Annual charges shall be divided by four (4) for purpose of billing quarterly.
- (3) Cheltenham shall prepare a quarterly invoice in a manner which identifies the cost related to the Conveyance System as defined in Section IV. B and distinguished from the costs of operating and maintaining other Conveyance Facilities serving other areas.
- (4) Bills shall be payable to Cheltenham by Jenkintown within thirty (30) days of receipt of the bill by Jenkintown. If Jenkintown objects to any bill, in whole or in part, Jenkintown shall notify Cheltenham in writing prior to the bill's due date. This writing shall hereinafter be referred to as the "Objection Letter". Jenkintown waives all objections to any bill(s) where an Objection Letter in accordance with this Article is not submitted in writing prior to the bill's due date. If information would arise after 30 days that contradicts a bill, both Parties shall consider reimbursement or adjustment of the affected bill.
  - (a) The Objection Letter shall state, in detail, the exact nature of the objection and shall include any and all facts and documentation supporting the objections. Within thirty (30) days after receipt of the Objection Letter, Cheltenham and Jenkintown shall meet to discuss the substance of the Objection Letter. In the event that no such resolution can be reached, the Parties shall then proceed to arbitration as provided under Section VIII of this Agreement.
  - (b) Within sixty (60) after receipt by Cheltenham of the Objection Letter, Cheltenham and Jenkintown shall proceed to arbitration pursuant to Section VIII of this Agreement to resolve the specific objections made in the Objection Letter.
  - (c) During the (60) day period prior to arbitration, Jenkintown shall have the opportunity to inspect and audit Cheltenham's record provided to Jenkintown by Cheltenham in accordance with Section XI. A of this Agreement.

All billing, (including those bills subject to an Objection Letter) shall be paid in full and by the due date. If amounts are billed but are withheld from payment by Jenkintown, all arbitration awards in favor of Cheltenham shall include interest at the legal rate in addition to the award of the principal amount or any part thereof. If a refund to Jenkintown is awarded, the arbitration award shall award interest at the legal rate to Jenkintown in addition to the refund awarded.

I. Notice of Changes in Rates.

- (1) Cheltenham shall provide notice to Jenkintown of any change in rates charged to Cheltenham by the City or associated billing practices at least ninety (90) days in advance of the effective date of such new rates or practices.
- (2) If Jenkintown has an objection to the change in rates or billing practices imposed by the City, Jenkintown shall notify Cheltenham, in writing, within sixty (60) days from receipt of Cheltenham's notice as to its specific objection(s) ("Change Objection Letter").
  - (a) The Change Objection Letter shall include any and all facts or documentation supporting the specific objections contained therein.
- (3) In the event Jenkintown fails to serve Cheltenham with a Change Objection Letter within sixty (60) days from receipt of Cheltenham's notice, the rate increase or change in billing practices shall be deemed fully accepted and approved by Jenkintown and Jenkintown shall have waived all rights under this Agreement or by any other legal proceeding to contest the rate increase or change in billing practices.

V. **CONSTRUCTION, OPERATION, AND MAINTENANCE OF CONVEYANCE SYSTEMS**

A. Design and Construction of Sewers. Jenkintown at its sole cost and expense shall design, construct, own, operate, maintain, and repair the sanitary sewers and connection to Cheltenham's system necessary to convey its wastewater to Cheltenham's system in accordance with PADEP rules, orders and regulation and industry standards.

B. Approved Points of Interconnection.

- (1) The approved points of interconnection are specified in Exhibit 1.
- (2) Cheltenham may require additional connection points if deemed necessary to a reasonable degree of engineering certainty, or, if directed by City, DEP, EPA or other regulatory action, regulation or directive. Cheltenham may approve Jenkintown's request for additional connection points. Costs shall be borne by Jenkintown.
- (3) If an approved point of connection is abandoned, that capacity may be redistributed to other Jenkintown connections, provided the redistribution is

within the capacity of the sewers downstream of the remaining connection points.

C. Plan to Eliminate Unauthorized or Harmful Discharges.

- (1) Within ninety (90) days of written notice from Cheltenham, Jenkintown shall submit a plan to Cheltenham outlining actions to be taken to eliminate unauthorized or harmful discharges if any of Jenkintown's connections to Cheltenham's wastewater system are determined by Cheltenham or any governmental regulatory agency to be:
  - (a) maintenance problem, or
  - (b) sources of unauthorized discharge(s), or
  - (c) sources of discharge(s) which adversely affect Cheltenham's wastewater conveyance and/or the City's treatment system, or
  - (d) sources of discharge(s) which cause or contribute to any violation of federal, state or local laws or permits.
- (2) Cheltenham shall promptly and reasonably approve or reject said plans, and shall notify Jenkintown in writing, of the basis for rejection of the proposed plan. In the event that Cheltenham rejects Jenkintown's proposed plan, the Parties agree to promptly meet and discuss the basis for Cheltenham's rejection and to attempt to negotiate in good faith terms acceptable to both Parties. If an amicable resolution cannot be met, the Parties shall proceed with Section VIII Disputes.
- (3) Any action taken pursuant to this Section, and Section VII if necessary, taken to assess and correct unauthorized discharges within Jenkintown shall be at the sole expense of Jenkintown.

VI. **METERING SAMPLING AND DATA**

- A. Meters and Equipment. Jenkintown shall own, operate, and maintain the meter(s) and the electronics associated with and required for the accurate measurement of wastewater flow into the Cheltenham's sewer system at the approved points of interconnection in accordance with the PADEP rules, orders and regulation, with industry standards, and with all manufacturers' specifications and warranties. Jenkintown shall provide Cheltenham quarterly and upon request copies of all metering and calibration test/studies performed on any Jenkintown meter or equipment, and shall notify Cheltenham, in writing, as provided under this Agreement, of its determination to utilize temporary flow meters as provided under this paragraph. Jenkintown shall set up its own data telemetry system at its expense. Jenkintown shall conduct full calibration of all meters and related metering equipment at least once per quarter and conduct dye tests upon request, but no more frequently than annually, by a

firm experienced with such tests, equipment and calibration capabilities and independent of both Jenkintown and Cheltenham. Jenkintown's meter results shall be used for purposes of billing and assessing penalties unless they are determined by mutual agreement of engineers for both municipalities to be outside the acceptable range of error or otherwise requested by City, DEP, EPA or other regulatory action, regulation or directive.

B. Metering. Cheltenham shall measure wastewater flow and loadings by metering and sampling at the point of connections whenever Cheltenham, in its discretion, determines it to be necessary, practical and/or economical. Cheltenham, upon reasonable notice to Jenkintown, shall be entitled to jointly inspect the metering equipment maintained by Jenkintown. Cheltenham shall base its operation and maintenance charges on actual flow and loadings measurements whenever available and deemed accurate by Cheltenham. In the absence of actual flow and loadings measurements, Cheltenham shall estimate for billing purposes, using generally accepted engineering judgment, previously metered flow(s) and/or strength(s).

(1) If Cheltenham elects to install and utilize permanent flow meters, then data from these meters will be utilized as additional flow data as required and the meters will be subject to the calibration and dye testing requirements of this Agreement.

C. Sampling.

(1) Cheltenham shall have the right, upon verbal notice to Jenkintown, to enter the areas in Jenkintown served by Cheltenham under this Agreement at any time to sample Jenkintown's wastewater for billing or investigative purposes.

(2) Cheltenham shall have the right to enter the areas in Jenkintown served by Cheltenham under this Agreement at any time for the following purposes:

(a) To sample the wastewater of an SIU; and/or

(b) To trace a spill into the wastewater system, if such spill is believed to originate in Jenkintown.

(3) Jenkintown shall have the right to obtain splits of wastewater samples taken by Cheltenham for billing purposes

(4) All Cheltenham costs associated with sampling shall be the responsibility of Cheltenham.

D. Jenkintown Data to be supplied to Cheltenham.

Jenkintown shall make the following data available to Cheltenham and shall provide revisions and updates within 60 days of the update or upon request if in possession of such information directly or through Jenkintown's agents, consultants or contractors:

Geographic Information Systems data in form of shapefiles, databases, and/or files compatible with Cheltenham's version of ESRI ArcGIS software, or data in a format acceptable to both Cheltenham and Jenkintown, to include the following features and attribute data:

- The points of interconnection to Cheltenham's conveyance system; and
- Any Infiltration/Inflow studies and the data related thereto; and
- Any other engineering data or information that Cheltenham may request related to the terms and conditions of this Agreement.

E. Cheltenham Data to be Supplied to Jenkintown.

With regard to Cheltenham's points of interconnection with Jenkintown, Cheltenham shall make available to Jenkintown all data specified in Paragraph D immediately above.

- F. Notwithstanding the above, where less than a minimum number of EDUs are connected into Cheltenham's Sewer System at any point from an area in Jenkintown, Cheltenham may elect to base its sewer charges for same on water usage adjusted for infiltration (e.g. water usage x infiltration factor of 1.35). The minimum number of EDUs plus an industry standard for acceptable infiltration for this condition shall be determined upon mutual agreement in writing between Jenkintown and Cheltenham.

## VII. PRETREATMENT AGREEMENT

- A. Interjurisdictional Pretreatment Agreement. By entering into this Agreement, Jenkintown shall become a party to the "Interjurisdictional Pretreatment Agreement", (attached hereto and incorporated herein as Exhibit 3), as an "outside jurisdiction." Jenkintown agrees to comply with all of the provisions contained therein including, but not limited to, adoption of the City's most recent Wastewater Control Regulations and to continue to amend them in conformity with the City's amendments within 90 days of amendments by the City. Jenkintown further agrees to require that any outside jurisdictions which contribute to Jenkintown's sewer system tributary to Cheltenham Township also adopt and enforce the City's Wastewater Control Regulations.
- B. Ordinance. Jenkintown acknowledges that it has adopted, agrees to maintain, and will enforce an industrial pretreatment ordinance and such other ordinances as are necessary to prohibit the discharge of any sewage in its collection system that is prohibited by PADEP, the EPA or by the regulations of any applicable State, Federal or other governmental regulatory body as such regulations may exist from time to time, or that would prevent the NEWPCP from meeting permit requirements.

## VIII. DISPUTES

- A. Arbitration of Disputes. In the event of a dispute between the Parties concerning terms, conditions, and covenants of the Agreement or upon the issuance by Jenkintown of and Objection Letter or Change Objection Letter, Cheltenham and Jenkintown agree to submit the dispute to an Arbitration Panel. All petitions to compel or stay arbitration shall be filed in the Court of Common Pleas of Montgomery County, and both Cheltenham and Jenkintown agree to accept venue therein.

- B. Panel. The Arbitration Panel shall be composed of three (3) arbitrators, one appointed by Cheltenham, one by Jenkintown, and the third by agreement of the arbitrators selected by Cheltenham and Jenkintown within Montgomery County.
- (1) The arbitrators representing Jenkintown and Cheltenham shall be named within five (5) days from the request for the appointment of an Arbitration Panel. If, after a period of ten (10) days from the date of the appointment, the two (2) arbitrators appointed by Cheltenham and Jenkintown cannot agree on the third arbitrator, then either appointed arbitrator may request the American Arbitration Association, or its successor, to furnish a list of three (3) members of said Association, who are not residents of Cheltenham or Jenkintown or any other municipality which contributes wastewater flow to Cheltenham, from which the third arbitrator shall be selected.
  - (2) The arbitrator by Jenkintown shall then eliminate one (1) name from the list furnished by the American Arbitration Association within five (5) days after its publication, following which the arbitrator appointed by Cheltenham shall eliminate one (1) name from the list within five (5) days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the Arbitration Panel.
  - (3) Each of the Parties shall bear the costs of its own arbitrator and shall equally divide the cost of the third arbitrator and all other common costs.
  - (4) The arbitration proceedings shall commence within thirty (30) days of the selection of the third arbitrator and the arbitrators shall render their determination within thirty (30) days after the final hearing held by the Board of Arbitrators. The decision of such arbitrators shall be final and binding upon the Parties, except in the case of fraud.
  - (5) Upon mutual agreement of Cheltenham and Jenkintown, the arbitration may be delayed for a specified period of time in order to allow the Parties additional time for a negotiated settlement. Any delay in commencement of the arbitration shall last only as long as it is agreed by the Parties.

## IX. INDEMNIFICATION

- A. Jenkintown agrees to defend, indemnify and save harmless Cheltenham from and against any and all claims, actions, cause, suits, demands, losses, interest, penalties and liabilities arising from performance of the terms and conditions of this Agreement by reason of:
- (1) Cheltenham's inability, due to causes beyond its control, to perform any of the provisions of this Agreement;
  - (2) Injury (including death) to persons and damages to property resulting from operation under this Agreement to convey Jenkintown's wastewater through Cheltenham's sanitary sewer system, where such injury is due to the negligence

of Jenkintown or its employee, servant or agents or the inherent nature of their operation.

- (3) EPA or PADEP action of any kind whatsoever, whether direct or indirect, for any work undertaken by Jenkintown, its contractors or consultants, necessary and required by this Agreement due to rejection of said work by the EPA or PADEP.
  - (4) Any grant fund, or any portion thereof, received by Jenkintown and later determined to be ineligible for reimbursement by the appropriate regulatory agency or grant auditors.
- B. Cheltenham and Jenkintown agree that in the event of EPA or PADEP action or any other governmental regulatory action against Cheltenham of any kind whatsoever, for activities carried out under this Agreement either by Cheltenham or Jenkintown, they shall equitably apportion responsibility for payment of any cost, fines, penalties or damages arising from such action. Should Cheltenham bill Jenkintown pursuant to this paragraph, Cheltenham shall inform Jenkintown as to the nature of the bill.
- C. Jenkintown shall not be liable for injuries (including death) or property damage occurring during the course of treatment at the City's NEWPCP or any other City plant, except to the extent that such injuries and damages are due to the negligence of Jenkintown or its employees, servants or agents and where such injuries result in a direct increase in City's operating costs ("Limited Liability"). Jenkintown shall be solely responsible for such injuries (including death) and increased costs due to any such Limited Liability only when such injuries and damages are due to the sole negligence of Jenkintown or its employees, servants or agents. Jenkintown shall be jointly and severally responsible for such injuries (including death) and increased costs when such injuries and damages are due to the joint and several negligence of Jenkintown and another party(ies), consisting of Cheltenham, Abington and/or City.
- D. Cheltenham shall not be liable for injuries (including death) or property damage occurring during the course of treatment at the City's NEWPCP or any other City plant, except that such injuries and damages are due to the negligence of Cheltenham or its employees, servants or agents and where such injuries result in a direct increase to City's operating cost. Cheltenham shall be responsible for its proportionate share of such increased costs, but not those of Jenkintown.
- E. Nothing set forth in this Agreement shall limit or prohibit Cheltenham or Jenkintown from resorting to any appropriate remedy in law or equity, or any combination of remedies for noncompliance with this section of the Agreement; however, jurisdiction over disputes regarding this Article shall first be subject to resolution as provided under Article VIII of this Agreement.

## X. PAPER RERATES

- A. If the NEWPCP, or any other POTW servicing flows from Jenkintown, is rerated without any physical expansion paid exclusively by the City, Jenkintown's charges shall be adjusted accordingly to reflect Cheltenham's new proportionate share of the rerated facility.
- B. If the City requires contribution by Cheltenham to increase the rated capacity of the NEWPCP, or any other plant servicing Cheltenham's flow, and a proportion of that contribution is paid by Jenkintown, Jenkintown shall receive an increase in its capacity of wastewater flow and/or loading to Cheltenham proportionate to its contribution to the physical improvements to the Plant, which resulted in the increase in Plant capacity.

## XI. MISCELLANEOUS

- A. Inspection and Audit. Cheltenham and Jenkintown agree to maintain complete records and accounts concerning their responsibilities under this Agreement. Both Parties shall, at all times, have the right to examine and inspect said record and accounts upon thirty (30) days written notice. If required by law or regulation, Cheltenham and Jenkintown shall make said records and accounts immediately available to federal and state authorities.
- B. No Transfer of Right. Jenkintown shall not confer, transfer, convey, assign or license to any third party any rights obtained under this Agreement including, but not limited to, assignment of wastewater conveyance capacity or treatment capacity without the express prior written consent of Cheltenham and the City.
- C. Ownership, Management and Control of Collection and Conveyance Facilities. Cheltenham retains sole ownership and control of wastewater collection and conveyance facilities in Cheltenham and agrees to operate, maintain, repair, and improve it facilities associated with service to Jenkintown. Cheltenham retains the sole exclusive right to make all managerial and other decisions regarding it wastewater facilities, including, but not limited to, those decisions regarding operation, maintenance, upkeep, expansion, abandonment or replacement of all or a portion of its wastewater facilities. This Agreement shall not be deemed to create a joint enterprise or partnership between Jenkintown and Cheltenham.
- D. Successors and Assigns. All the covenants contained in this Agreement shall extend to and bind the respective successor and assigns of the Parties hereto with the same effect as if the words "successors and assigns" had, in each case, been specifically mentioned.
- E. Waiver. The failure of either Cheltenham or Jenkintown to insist upon strict performance of this Agreement or of any of the terms and condition hereof shall not be construed as a waiver of any of its rights herein granted, unless specifically stated in the Agreement.

- F. Caption and Headings. The captions and heading in this Agreement are for convenience only and are not part of the Agreement. The captions do not in any way define, limit, describe, modify or amplify the provision of this Agreement or the scope or intent thereof.
- G. Entire Agreement. This Agreement and its Exhibits, incorporated herein, represent the entire Agreement of the Parties hereto and there are no collateral or oral agreements, representations or understandings, verbal or otherwise. This Agreement may be amended or modified only in writing signed by both Cheltenham and Jenkintown. This Agreement supersedes all previous wastewater agreements between Cheltenham and Jenkintown, which are hereby deemed revoked and terminated.
- H. Third Party Review. Jenkintown agrees that this Agreement is made subject to any future change or material modification in the existing Agreement between Cheltenham and the City, referred to in the Background hereto, and that it will be bound by such changes or modifications as and when made. Cheltenham agrees to consult with Jenkintown prior to completing any negotiations for any such changes or material modifications, to determine the applicability of such changes or modifications to Jenkintown, and to determine if renegotiation of the Agreement is necessary. Cheltenham agrees to: (a) notify Jenkintown in advance if Cheltenham applies to PADEP for additional EDUs under a CMP and (b) notify Jenkintown in advance if Cheltenham intends to attend a meeting with PADEP concerning an application for additional EDUs under a CMP.
- I. Severability. In the event any provisions hereof are held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then continue in full force as if such illegal or invalid provision had not been contained herein.
- J. Use of Singular and Plural. As required by the context, the use of the singular shall be construed to include the plural and vice versa.
- K. Notices. All notices, payments and communication required to be given in writing under this Agreement shall be sent by certified United States mail, postage prepaid and by email communication or delivered by hand delivery with receipt obtained, to the address below or at such other address as each party may designate, in writing, from time to time:

If intended for Cheltenham:

Township Manager  
Township of Cheltenham  
8230 Old York Road  
Elkins Park, PA 19027

If intended for Jenkintown:

Borough Manager  
Borough of Jenkintown  
700 Summit Avenue  
Jenkintown, PA 19046

[REMAINDER OF THIS PAGE BLANK – SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Township of Cheltenham has caused this Agreement to be executed by its Township Manager, Borough of Jenkintown, acting through its duly authorized officials, has executed this Agreement on behalf of Borough of Jenkintown, and the City of Philadelphia, acting as of the day and year first above written.

**TOWNSHIP OF CHELTENHAM**

By: \_\_\_\_\_  
Harvey Portner, President  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Bryan Havar  
Township Manager

**BOROUGH OF JENKINTOWN**

By: \_\_\_\_\_  
Deborra Sines Pancoe, President  
Borough Council

Approved as to form:

\_\_\_\_\_  
George Locke  
Borough Manager

**CITY OF PHILADELPHIA**

By: \_\_\_\_\_  
Bernard Brunwasser  
Commissioner, Philadelphia Water Department

Approved as to form:

\_\_\_\_\_  
Gerald D. Leatherman  
Divisional Deputy City Solicitor

**WASTEWATER SERVICE AGREEMENT**  
**BETWEEN CHELTENHAM TOWNSHIP AND JENKINTOWN**  
**BOROUGH**

**EXHIBIT 1**

The maximum allowable flow limits for 18 CFS set forth below, including the individual flow limits for the points of interconnection, continue to be in effect, until such time that Cheltenham Township completes construction on and commences operation of: (1) a new sewer line within the City or (2) an equalization tank or tanks to accommodate the 29 CFS or (3) a pump station with force main within the City as more fully provided in the agreement between the City and Cheltenham Township. Once the new sewer line within the City or the equalization tank or tanks is/are in operation, the maximum allowable flow limits for 29 CFS set forth below, including the points of interconnection, shall become effective.

Location	Point of Interconnection	Maximum Allowable Flow, 18 CFS* (CFS)	Maximum Allowable Flow, 29 CFS* (CFS)
J-RU	Runneymeade Avenue	0.75	0.974
J-WST	West Greenwood Avenue	0.55	0.602
J-WN	Wyncote House	0.83	0.948
	Total	2.15	2.524

\* 18 CFS and 29 CFS amounts refer to Cheltenham Township's Maximum Allowable Flow Limit set forth in the agreement between the City and Cheltenham Township.

**EXHIBIT 2A**  
**Percent Contribution Calculations**

**Existing Contract Amount (18cfs)**

	Current Flow	
	cfs	
Jenkintown	2.15	11.94%
Abington	6.516	36.20%
Cheltenham	9.220	51.22%
Springfield	0.114	0.63%
Total	18	100.00%
PWD	8	
Point of connection to PWD (MH A-1)	26	

**2013 Contract Amount (29 cfs)**  
**Interceptor A to point at which Jenkintown flows contribute**

	Current Contract cfs	Future Flow cfs	Peaking Factor	Future w/Peaking factor cfs	Max. Future Flow cfs	
Jenkintown	0	0	0	0.000	0.000	0.00%
Abington	6.516	1.24	3.7	4.588	11.104	42.19%
PWD		0	0	0.000	0.000	0.00%
Cheltenham	9.220	1.590	3.7	5.883	15.103	57.38%
Springfield	0.114	0.000		0.000	0.114	0.43%
Point of connection to PWD (MH A-1)	15.85	2.83		10.471	26.321	100.00%

**2013 Contract Amount (29 cfs)**  
**Point at which Jenkintown Flows contribute to Interceptor A Flows (See Exhibit 2B for location.)**

	Current Contract	Future Flow	Peaking Factor	Future w/Peaking factor	Max. Future Flow	

	cfs	cfs		cfs	cfs	
Jenkintown	2.15	0.101	3.7	0.374	2.524	8.75%
Abington	6.516	1.24	3.7	4.588	11.104	38.50%
PWD		0	0	0.000	0.000	0.00%
Cheltenham	9.220	1.590	3.7	5.883	15.103	52.36%
Springfield	0.114	0.000		0.000	0.114	0.40%
Point of connection to PWD (MH A-1)	18	2.931		10.845	28.845	100.00%

**2013 Contract Amount (29 cfs)**

**Point at which PWD Flows contribute to Interceptor A Flows (See Exhibit 2B for location.)**

	Current Contract cfs	Future Flow cfs	Peaking Factor	Future w/Peaking factor cfs	Max. Future Flow cfs	
Jenkintown	2.15	0.101	3.7	0.374	2.524	6.85%
Abington	6.516	1.24	3.7	4.588	11.104	30.14%
PWD	8	0	0	0.000	8.000	21.71%
Cheltenham	9.220	1.590	3.7	5.883	15.103	40.99%
Springfield	0.114	0.000		0.000	0.114	0.31%
Point of connection to PWD (MH A-1)	26	2.931		10.845	36.845	100.00%

**EXHIBIT 2B**

# Cheltenham Township



## Official Act 537 Plan

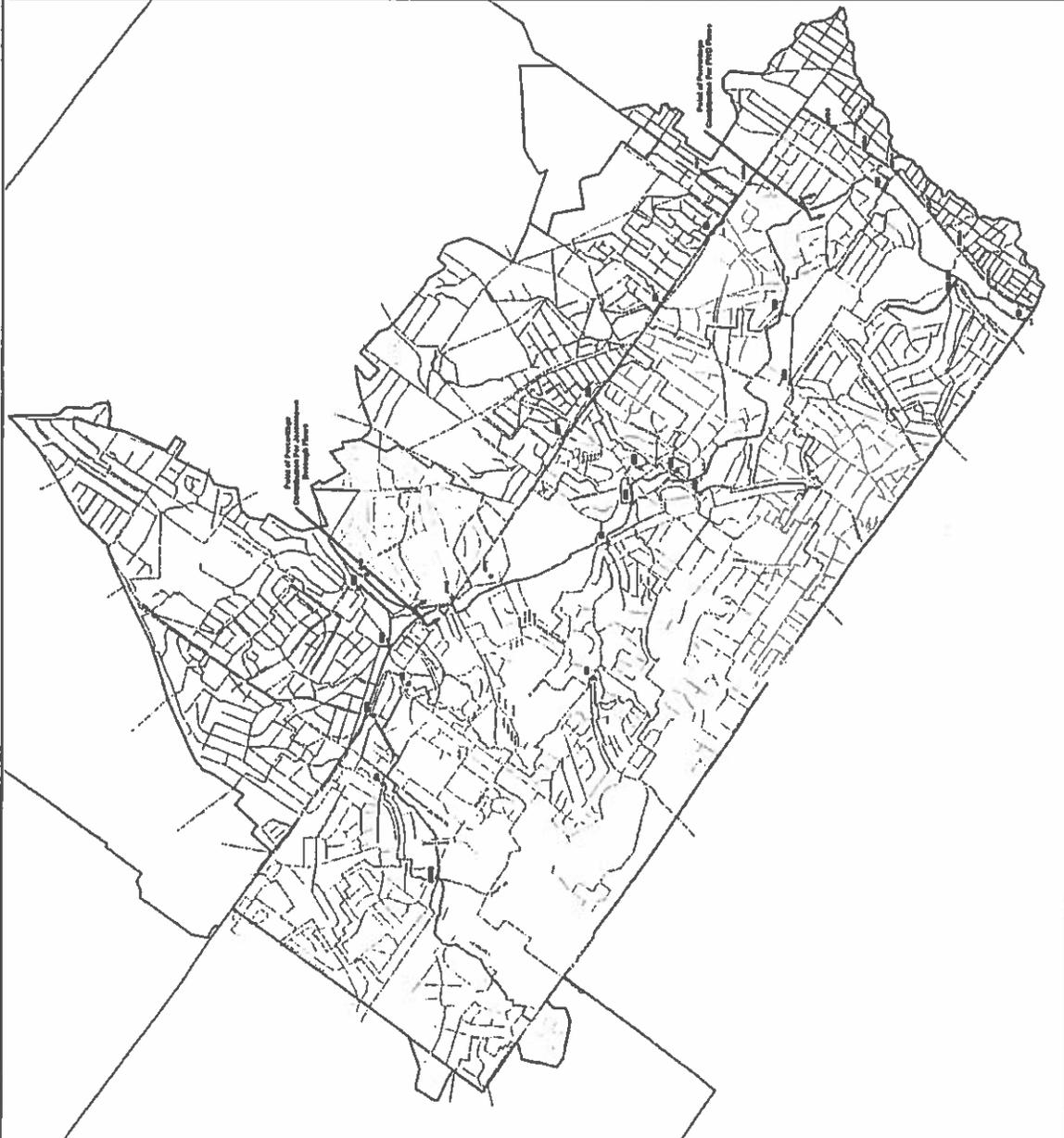
### Exhibit 2B Percent Contribution Map Collection/Conveyance System Map

- Map Legend**
- 2017 Rate Schedule
  - 2018 Rate Schedule
  - 2019 Rate Schedule
  - 2020 Rate Schedule
  - 2021 Rate Schedule
  - 2022 Rate Schedule
  - 2023 Rate Schedule
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  - 2042 Rate Schedule
  - 2043 Rate Schedule
  - 2044 Rate Schedule
  - 2045 Rate Schedule
  - 2046 Rate Schedule
  - 2047 Rate Schedule
  - 2048 Rate Schedule
  - 2049 Rate Schedule
  - 2050 Rate Schedule

\*Percentage of revenue set for year in 2017, except 2020.

Scale: 1" = 100'

ARRC



**EXHIBIT 3**

RECEIVED

JUL 02 2010

WASTEWATER SERVICE AGREEMENT CHELTENHAM TOWNSHIP  
BETWEEN CHELTENHAM TOWNSHIP AND THE CITY OF PHILADELPHIA

This Agreement ("Agreement") is made this 30<sup>th</sup> day of June, 2010, ("Effective Date") by and between the CITY OF PHILADELPHIA acting through its Water Department ("City") and the Township of Cheltenham, Montgomery County, Pennsylvania, ("Township"), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 8230 Old York Road, Cheltenham Pennsylvania. (collectively referred to as the "Parties").

BACKGROUND

WHEREAS, City owns and operates wastewater collection and treatment facilities providing services to convey, treat and dispose of wastewater and its by-products ("Wastewater Treatment Services"); and

WHEREAS, the Council of the City of Philadelphia has by Ordinance, Bill No. 1129, approved by the Mayor on May 20, 1987, authorized the Water Commissioner to enter into agreements for the sale of Wastewater Treatment Services to suburban communities; and

WHEREAS, the Parties have entered into prior Wholesale Wastewater Agreements whereby the City agreed to provide Township Wastewater Treatment Services; and

WHEREAS, Township is aperiodically exceeding its 18 CFS Maximum Flow limit for the Point of Connection on the Tookany Creek north of Adams Avenue contained in its current Wholesale Wastewater Agreement; and

WHEREAS, Township desires to continue to procure Wastewater Treatment Services from City to ensure wastewater treatment for Township; and

WHEREAS, the Parties desire to enter into a new Wholesale Wastewater Agreement which shall address the Township's Flow Limit exceedances and will allow the Township time to create an Official Plan to comprehensively address its sewage disposal needs pursuant to the Pennsylvania Sewage Facilities Act (commonly referred to as "Act 537"); and

WHEREAS, City is actively managing a Federal and State-mandated Combined Sewer Overflow ("CSO") program within City, and such program requires the City to maximize the treatment of wastewater collected in City's combined sewer system and to minimize the volume and duration of discharges from its CSOs; and

**WHEREAS**, City in order to efficiently manage its CSO program must limit the treatment of inflow and infiltration from separate sanitary sewer systems within the City and from the City's wholesale customers; and

**WHEREAS**, City desires to provide and Township desires to utilize Wastewater Treatment Services in accordance with the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, intending to be legally bound and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

**I. DEFINITIONS**

For the purposes of this Agreement, the following terms and phrases shall have the following meanings:

- A. **BOD**: Biochemical Oxygen Demand (BOD<sub>5</sub>): The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at 20 degrees Celsius expressed in terms of weight and concentration (milligrams per liter (mg/l)).
- B. **DRBC**: Delaware River Basin Commission.
- C. **EPA**: United States Environmental Protection Agency.
- D. **Fiscal Year**: A fiscal year shall be the year beginning on July 1 of any given year and ending on June 30<sup>th</sup> of the following year.
- E. **Flow Limits**: The maximum amount of wastewater that may be discharged to the City as measured in Millions of Gallons per Day ("MGD") and/or Cubic Feet per Second ("CFS") for treatment as specified in Exhibit 1.
- F. **Industrial User**: Any person that introduces an indirect discharge regulated under the Clean Water Act, state or local law to the POTW.
- G. **Loadings Limits**: The maximum Biochemical Oxygen Demand (BOD) loadings and Suspended Solids ("SS") loadings that may be discharged to City for treatment .

H. NEWPCP: Northeast Water Pollution Control Plant.

L. Non-domestic User: Commercial, industrial or municipal users who discharge to the POTW.

J. PADEP: Commonwealth of Pennsylvania Department of Environmental Protection.

K. PCB: Polychlorinated Biphenyls.

L. Prohibited Exceedance: Any exceedance of the Flow and/or Loading Limits established in this Agreement and Exhibits.

M. POTW: Publicly Owned Treatment Works. A treatment works as defined by section 212 of the Clean Water Act (33 U.S.C. §1292) which is owned by the City including any devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage and industrial waste. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. POTW shall also include any sewers that convey wastewater to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.

N. Significant Industrial User: ("SIU") (1) any Industrial User subject to any National Categorical Pretreatment Standard; or (2) any Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater) or contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3) any Industrial User that is found by the City, PADEP or EPA to have a reasonable potential, either alone or in conjunction with other discharges, to adversely affect the POTW, the Collector system, the Solid Waste Byproducts of the POTW, or air emissions from the POTW.

O. SS: The total suspended matter that floats on the surface of, or is suspended in water, wastewater or other liquids, and which is removable by laboratory filtering expressed in terms of concentration (milligrams per liter (mg/l)).

## II. TERM

A. This Agreement shall start on the Effective Date and shall continue in force and effect for a period of five years and zero months thereafter unless terminated earlier as provided herein.

B. City shall have the right to terminate this Agreement for "cause" at any time, but only upon twelve (12) months written notice. "Cause" shall mean:

(1) Continuing exceedances of the Flow Limits contained in Exhibit 1, attached hereto and fully incorporated by reference. However, as long as the Township remains in full compliance with Section III, Paragraph C, the Township's existing exceedances shall not be deemed "cause" under this paragraph; or

(2) Failure by Township to meet its financial obligations under this Agreement for a period of three (3) consecutive months; or

(3) Failure by Township to comply with a final decision or determination of an Arbitration Panel or court of competent jurisdiction rendered under this Agreement within three (3) months of the date the decision or determination became final, unless otherwise specified by the Arbitration Panel or court of competent jurisdiction.

## III. SCOPE OF SERVICES/WASTEWATER LIMITS

A. Quantity City shall convey, treat and dispose of wastewater and its byproducts delivered by Township to approved connection points identified in Exhibit 1 of this Contract.

B. Flow Limits The wastewater delivered by Township to City shall not exceed the maximum flow limitations as set forth in Exhibit 1 of this Agreement. ("Flow Limits")

C. Prohibition on Discharges that Exceed the Flow Limits.

(1) Township's wastewater flow shall not exceed the Flow Limits set forth in Exhibit 1 to this Agreement. No planned sewer activity that will cause or contribute to an exceedance shall be permitted without the written approval of City. Township shall be proportionally responsible for all City costs and damages caused by Township's exceedances of the stated Flow Limits.

(2) Paragraph C(1), immediately above, notwithstanding, the Parties acknowledge and agree that the Township is aperiodically exceeding its Flow Limit contained in Exhibit 1, for the Point of Connection on the Tookany Creek north of Adams Avenue. During wet weather periods, and for significant periods thereafter, the Township exceeds its Flow Limit at this point of connection.

(3) During wet weather periods the Township experiences sanitary sewer overflows (SSOs) within the township. In order to prevent these SSOs the Township has proposed building a Temporary Bypass Pumping System (Bypass System) on the Township's Interceptor A. The Bypass System will allow the Township to now capture the excess sewage currently being discharged as SSOs within the township and convey that flow to the City. While the Bypass System is in place the Township will prepare an Act 537 Plan for the Township sewer system (including its contributing municipalities) and will develop and implement a program for elimination of SSOs and for eliminating exceedances of the Township's Flow Limits.

(4) The Bypass System described in paragraph C(3), immediately above, will increase aperiodically the sanitary flow coming into the City and thus will increase and exacerbate the number of Flow Limit exceedances by the Township. In addition, it will increase the volume of CSO discharges. Pursuant to the City's CSO Long Term Control Policy the City is required to reduce its CSO discharges—not expand them.

(5) However, since the Township's SSOs pose a threat to public health and the environment, the City agrees, on a temporary basis, to accept the additional flow that will be provided by the Bypass System and to allow, again on a temporary basis, continued exceedances of the Township's Flow Limits under the following terms and conditions:

(a) The Township shall immediately institute Act 537 sewage facilities planning within the Township's entire service area. The Township's final

Official Plan shall be completed and submitted to PADEP no later than two years from the Effective Date of this Agreement.

(b) The Township shall work in conjunction with the City in developing its Act 537 Official Plan. The Township shall meet with the City, at a minimum, every three months to update the City on its efforts to complete its Act 537 Official Plan.

(c) Acceptance of the additional flow from the Bypass System, and any new enlarged sanitary sewer should one be built, is based on the City's belief that all this additional flow shall be discharged from the City's permitted CSO structures and not from any unpermitted structures. This belief was based on modeling efforts conducted by the City. However, both Parties acknowledge that due to the inherent limitations of modeling, the unpredictability of weather events, circumstances presently not foreseen, etc., that the City's modeling projections may be incorrect.

(d) It is not the intention of the Parties to simply move unpermitted sewage discharges from the Township and convert them into unpermitted sewage discharges within the City. Therefore, under no circumstances, whatsoever, shall the additional flow from the Bypass System and /or any new, enlarged sanitary sewer, should one be built, cause or contribute to the discharge of sewage from anywhere within the City's limits contributory to the NEWPCP other than the City's permitted CSO outfalls.

(e) Should the City, in its sole, absolute and complete discretion, determine based upon its flow monitoring, modeling, engineering studies, etc. that the Township's exceedances of its Flow Limits are either causing or contributing to unpermitted discharges of sewage anywhere within the City limits contributory to the NEWPCP the Township shall immediately cease these discharges and shall hold or contain within the Township all volumes of sewage necessary to prevent any unpermitted discharges within the City. Failure to comply with this paragraph shall, in addition to all other remedies under this contract and under applicable law, be cause for termination of this contract. Further, notwithstanding any other

provision in this contract, failure to comply with this paragraph shall eliminate and render null and void both the City's waiver of Exceedance Charges provisions, (the waiver for the first five years from the Date of this Agreement as well as the waiver of Exceedance Charges thereafter) and the Township shall be liable for all Exceedance Charges starting at the Effective Date of this Agreement.

(f) No later than five years and zero months from the Effective Date of this Agreement the Township shall either be in compliance with the Flow Limits contained in Exhibit 1 or have entered into a new contract with the City whereby the City has agreed to accept additional flow from the Township and the Township is now in compliance with these new flow limits. Both parties agree that the City is under absolutely no obligation, whatsoever, to enter into a new contract with the Township expanding the Township's existing Flow Limits.

(g) Although under absolutely no obligation to accept additional flow from the Township, should the City in its discretion agree to accept additional flow, the Township shall be responsible for paying its costs associated with managing this additional flow so that it does not increase either the volume or duration of the City's CSO discharges. (As managing wet weather flows can be extremely expensive the City greatly encourages the Township to reduce its inflow and infiltration into the Township's sanitary sewers so that it can come into compliance with its existing Flow Limits contained in Exhibit 1.)

(h) Should the Township fail to comply with subparagraph (f), and not be in compliance with either its existing Flow Limits or any new flow limits that may be agreed upon by the Parties within five years and zero months from the Effective Date of this Agreement, the Township shall be subject to Exceedance Charges as set forth in Paragraph D, immediately following.

D Exceedance Charges.

Exceedances of the Township's Flow Limits can cause serious environmental and operational problems for the City. Exceedances can cause localized sections of the City's sewer system to become surcharged and result in unpermitted discharges of sewage within the City.

Exceedances can increase or contribute to the volume and duration of CSO discharges contrary

to the City's CSO Long Term Control Plan. Exceedances can cause operational and maintenance issues as well as make future sewage facilities planning much more difficult. Finally, such exceedances can result in, or contribute to, the City being required to significantly increase its capital and operating expenditures as well as pay significant environmental fines.

Therefore, to ensure exceedances of flow limits will not occur the City imposes Exceedance Charges on its wholesale wastewater customers. Should the Township exceed its Maximum Flow Limits contained in Exhibit 1, Township shall pay Exceedance Charges, as set forth below, in full, as part of their next billing statement.

The Maximum Flow Exceedance Charge shall be assessed for each and every 2.5 minute period recorded flow rate where the flow rate exceeds the maximum allowable flow contained in Exhibit 1.

The Maximum Flow Exceedance Charge penalty rate shall be \$110 (One Hundred Ten Dollars) per CFS, or portion thereof, assessed for each and every 2.5 minute period recorded flow rate where the flow rate exceeds the maximum allowable flow contained in Exhibit 1.

During 2011, and for each calendar year thereafter, the exceedance charges stated above will be adjusted in accordance with the changes in the Consumer Price Index for the prior calendar year, upon the availability of the Consumer Price Index for January of each subsequent year. The index to be used for this adjustment shall be the Consumer Price Index published by the U.S. Bureau of Labor Statistics for all urban consumers ("CPI-U") for the Northeast region of the U.S., all items.

Although the Township has aperiodically exceeded its Flow Limits, and will probably do so aperiodically over the next five years, the City agrees to waive all Exceedance Charges for five years and zero months from the Effective Date of this Agreement, if the Township takes the following actions:

- (1) Completes its Act 537 planning ; and
- (2) Uses its best efforts to eliminate inflow and infiltration into its sewer system from Cheltenham Township as well as from all contributing municipalities (Abington, Jenkintown, etc.) in order to achieve the goal of remaining within its Flow Limits.

This waiver, however, becomes null and void should the Township violate Section III C (5)(e) of this Agreement. If Section III C(5)(e) of this Agreement is violated the Township shall be charged and agrees to pay within 30 days all Exceedance Charges for all exceedances from the Effective Date of this Agreement.

If the Township wishes to avoid being subject to Exceedance Charges for additional time beyond the five years and zero months from the Effective Date of this Agreement the Township shall take all of the following actions specified immediately below:

1. During the first five years from the Effective Date of this Agreement the Township shall complete fully designed and engineered plans and specifications, signed and sealed by a professional registered engineer, for a storage tank of sufficient size and capacity to eliminate Flow Limit exceedances.
2. In the event of a Flow Limit Exceedance, anytime after five years and zero months from the Effective Date of this Agreement, Township shall then, within ten days of the Flow Limit Exceedance, submit to PADEP its plans and specifications for its storage tank for PADEP's approval and issuance of a Water Quality Part II NPDES construction permit.
3. Within ninety days of the Flow Limit Exceedance the Township shall have bid and awarded the contract for construction of the storage tank.
4. Within thirty days from receiving PADEP's Water Quality Part II NPDES construction permit the selected contractor shall begin construction of the storage tank.
5. The storage tank shall be completed and fully operational no later than two years from the date the Township receives its Water Quality Part II NPDES construction permit.
6. In addition to having a storage tank designed and ready to be built, the Township shall pay an annual dues contribution of \$40,000 (Forty Thousand Dollars) starting on January 1, 2011 and continuing every January 1 thereafter, to the Tookany Tacony Frankford Watershed Partnership.
7. Should the Township comply with all subparagraphs 1 through 6 above, then Exceedance Charges shall be waived up to the date when, in accordance with subparagraph 5, the storage tank would become fully operational. Thereafter, Exceedance Charges would again apply.
8. Should the Township fail to comply with any one of the provisions contained in subparagraphs 1 through 6, immediately above, Exceedance Charges shall begin five years and zero months from the Effective Date of this Agreement.

9. This waiver of Exceedance Charges after five years from the Effective Date of this Agreement, however, becomes null and void should the Township violate Section III C (5)(e) of this Agreement.

Exceedance Charges shall not be assessed for those storm events that are so severe that the PADEP has waived fines and penalties across the region for such events.

This Exceedance Charge paragraph does not expire at the end of this Agreement's term. Rather, this Exceedance Charge provision continues in full force and effect for as long as the City provides Wastewater Treatment Services to Township.

**E. Plan to Eliminate Flow Exceedances.** If Township's discharge to City is a Prohibited Exceedance as defined in Section III.C of this Agreement, then Township shall do the following:

- (1) The current flow exceedances, those that the Parties are aware of as of the Effective Date of this Agreement, are being addressed through the mechanism described in Section III C. Any other exceedances which may arise during the term of this Agreement will be handled according to the City's standard protocol set forth in subparagraph 2, immediately below.
- (2) Within ninety (90) days of written notice from City, Township shall develop and submit a written report detailing a plan of action to eliminate the Prohibited Exceedances within a one (1) year period from the date of the notice. Within thirty (30) days of receipt of the plan, Township and City shall meet to discuss the content of the Township's proposed plan, including any revisions to be required by City prior to implementation of the plan. Unless the City submits written amendments to the plan to Township within thirty (30) days of the date of the meeting, the plan shall be deemed to be approved. If Township fails to submit a good faith report outlining a plan to eliminate exceedances or if City is prohibited from approving the plan due to technical or legal reasons, Township shall pay City the sum of Ten Thousand Dollars (\$10,000.00) per week or part thereof, until such time as Township submits an approvable plan. In the event of a Flow Exceedance, nothing herein shall require City to certify the availability of treatment capacity until any Flow Exceedances have been eliminated or abated.

F. Certification of Sewer Capacity. City may determine that City does not have adequate sewer capacity to permit additional sewer connections to any part of Township system that will discharge to City if Township has exceeded the Flow Limits set forth in Exhibit I and has failed to comply with Section III C or submit an appropriate remediation plan as provided under Section III(E)(1,2) of this Agreement.

G. Polychlorinated Biphenyls Minimization. DRBC's Water Quality Regulation and Water Code Section 4.30.9 requires City to implement a Pollutant Minimization Plan ("PMP") at its NEWPCP to reduce its contribution of PCBs to the Delaware Estuary. In order to insure City's compliance with this requirement Township shall:

- (1) Within ninety (90) days of the Effective Date of this Agreement, supply City with any information it has regarding PCBs within the Township.
- (2) Provide an annual update regarding PCBs within the Township for City's annual PMP report. The update shall be submitted at least thirty (30) days prior to the due date of City's report to DRBC.
- (3) Implement any and all new and/or more stringent PCB requirements or reductions that may be imposed upon the City's NEWPCP. Township agrees to implement these requirements or reductions in its drainage area simultaneously with City's implementation of these new requirements.
- (4) Accept a numeric limit for PCB discharge into the NEWPCP which shall be consistent with Township's proportionate flows into the NEWPCP in both dry and wet weather situations in the event a numeric limit for PCBs is imposed upon discharges from City's NEWPCP.
- (5) Upon request by City implement a PMP throughout the entire drainage area of Township that contributes flow to the NEWPCP in order to achieve the maximum practicable reduction, as defined in DRBC's regulations, of PCBs into the NEWPCP.

- 
- (6) Cooperate with any City investigation or trackdown of PCBs within the Township's drainage area that contributes flow to the NEWPCP.

**IV. BILLING, PAYMENTS AND CHANGE IN RATES**

A. Township shall pay wastewater treatment charges consisting of its proportionate allocation of the capital, operation and maintenance costs of City's wastewater conveyance and treatment facilities in accordance with generally accepted wastewater rate methodologies, as determined by the City's most recent rate study completed by City's consultant. Township shall also pay a management fee to City.

(1) **Wastewater Treatment Charges:**

(a) **Capital Charges.** The capital charges shall include, but not be limited to, depreciation expense and a Rate of Return on Investment ("ROI") on facilities allocated to Township. Depreciation and ROI capital charges shall apply to all applicable capital projects which are completed, in-service and servicing Township which exclusively service Township flows, or if servicing Township flows in combination with flows from other sources, then the capital charges allocated to the Township shall be proportionate to the Township's flows serviced by said projects. Depreciation and Return on Investment (ROI) shall be billed as a fixed monthly charge.

(b) **Operations and Maintenance Charges.** Operation and maintenance charges shall include, but not be limited to, expenses associated with the operation, maintenance, repairs, rentals and replacements of City's wastewater facilities, proportionally allocated to Township from among City's wholesale customers and City, as well as proportionate shares of employee benefits, departmental overhead and other allocable non-direct overhead expenses. Operation and maintenance costs so allocated shall be net of miscellaneous operating revenues related to those expenses.

(c) **Management Fee.** Beginning on January 1, 2011, and continuing thereafter, the management fee shall equal twelve percent (12%) of the total Wastewater Treatment Charges.

- (d) Wastewater from seven connections from the City, as described in Exhibit 1, first flows into the Township's sewer system before it is ultimately returned to the City's system for treatment. Therefore, Township is entitled to a credit for this City flow. The City shall continue to use its current estimating methodology for this credit until the City installs meters at its seven connection points. Township shall cooperate with City so that the City can install its meters as quickly and as efficiently as possible. The City shall have complete and unrestricted access to all metering chambers so that the City can install, maintain, calibrate, repair and replace its meters as needed. Once these meters are installed the City shall use the actual metered flow to calculate the credit. Should any meter be determined to be malfunctioning or unreliable the City will use its best professional judgment to estimate the flow from that connection point. The City shall give Township access to the meters so that the Township can set up their own data telemetry system at Township's expense.
- (e) Township shall have the right, upon written request, to review City's method of computing the charges for, and allocating the cost of providing wastewater treatment services to Township. Such review shall be subject to the provisions relating to Notice of Changes in Rates (IV.C).

**B. Billing.**

- (1) City shall provide Township with wastewater flow and loadings data and computations utilized in billing Township for the three (3) month periods ending in March, June, September, and December. Billings for all other months will be estimates based upon one-third (1/3) of the amount of the prior quarter's billing.
- (2) City shall render bills to Township on a monthly basis for the charges set forth in this Agreement. Annual charges shall be divided by twelve (12) for purposes of billing monthly.
- (3) Bills shall be payable to City by Township within thirty (30) days of receipt of the bill by Township. If Township objects to any bill, in whole or in part, Township shall notify City in writing prior to the bill's due date. (This writing shall hereinafter be

referred to as the "Objection Letter.") The Township waives all objections to any bill(s) where an Objection Letter is not submitted in writing prior to the bill's due date.

- (a) The Objection Letter shall state in detail the exact nature of the objections and shall include any and all facts and documentation supporting the objections. Within thirty (30) days after receipt of the Objection Letter, City and Township shall meet to discuss the substance of the Objection Letter, and shall attempt to reach a resolution of the matters raised in the Township Objection Letter. In the event that no such resolution can be reached, then the parties shall proceed to Arbitration as provided under Section IX of this Agreement.
- (b) Within sixty (60) days after receipt by City of the Objection Letter, City and Township shall proceed to arbitration pursuant to Section IX of this Agreement to resolve the specific objections made in the Objection Letter.
- (c) During the sixty (60) day period prior to arbitration, Township shall have the opportunity to conduct an inspection and audit of City records in accordance with Section XII.A of this Agreement.

All billings, including those subject to an Objection Letter, shall be paid in full and by the due date. Late fees at the rate of one and one-quarter percent (1-1/4%) per month simple interest shall be added to any balance unpaid thirty (30) days after billing.

**C. Notice of Changes in Rates.**

- (1) City shall provide notice to Township of any change in rates or billing practices at least ninety (90) days in advance of the effective date of such new rates or practices.
- (2) If Township has an objection to the change in rates or billing practices Township shall notify City in writing within ninety (90) days from receipt of the City's notice as to its specific objection(s) ("Change Objection Letter").
  - (a) The Change Objection Letter shall include any and all facts or documentation supporting the specific objections contained therein.

(b) The Change Objection Letter shall automatically be deemed to be a demand for arbitration and the Parties shall immediately proceed to arbitration in accordance with Section IX of this Agreement.

(3) In the event Township fails to serve City with a Change Objection Letter within ninety (90) days from receipt of City's notice, the rate increase or change in billing practices shall be deemed fully accepted and approved by Township, and Township shall have waived all rights under this agreement or by any other legal proceeding to contest the rate increase or change in billing practices.

(4) Parties agree to accept the rate development methodology used by the City in determining the rates and charges in place at the execution of this Agreement. This rate development methodology is set forth in Exhibit 3 to this Agreement. Township shall have the right to dispute the calculation of wastewater treatment charges set pursuant to this Agreement, however Township shall not have the right to dispute, by arbitration or any other legal proceeding, the methodology used by the City in developing said charges to the Township. The Rate of Return on Investment charged shall also not be subject to dispute by the Township unless the City increases the Rate of Return on Investment to a rate higher than eight percent (8%) per annum.

V. CONSTRUCTION, OPERATION, AND MAINTENANCE OF  
TOWNSHIP'S CONVEYANCE SYSTEMS

A. Design and Construction of Sewers. Township at its sole cost and expense shall design, construct, own, operate, maintain and repair the sanitary sewers and connections to the City system necessary to convey its wastewater to the City system.

B. Approved Connection Points.

(1) The approved connection points are specified in Exhibit 1.

(2) In its sole discretion, City may require additional connection points or approve Township's request for additional connection points.

C. Plan to Eliminate Unauthorized or Harmful Discharges.

(1) Within sixty (60) days of written notice from the City, Township shall submit a plan to City outlining action(s) to be taken to eliminate unauthorized or harmful discharges if any of Township's connections to City's wastewater system are determined by City or any governmental regulatory agency to be:

- (a) maintenance problems, or
- (b) sources of unauthorized discharge(s), or
- (c) sources of discharge(s) which adversely affect the City's wastewater collection and treatment system, or
- (d) sources of discharge(s) which cause or contribute to any violation of federal, state or local laws or permits.

(2) City shall promptly approve or reject said plan, and shall notify Township, in writing, of the basis for the rejection of the proposed plan. In the event that City rejects the Township proposed plan, the parties agree to promptly meet and discuss the basis for City's rejection and to negotiate terms acceptable to City.

(3) Any action taken pursuant to this section shall be at the sole expense of Township.

VI. METERING, SAMPLING AND TOWNSHIP DATA

A. Meters and Equipment. City shall own and maintain the meter(s), metering equipment, and the electronics associated with the meters at the approved connection points. City shall own and maintain telemetering equipment installed at sites in the area served by Township which shall include equipment which converts the signal produced by the meter(s) into a signal which can be transmitted. City shall also own and maintain all equipment necessary to receive

and record telemetered information. Connections that are in City's discretion unsuitable for permanent flow metering shall be estimated for billing purposes. City may adjust such estimated flow figures whenever City, in its discretion, determines that it is necessary, practical and/or economical to utilize data from temporary flow meters. City shall, upon request, provide Township with copies of all metering and calibration tests/studies performed on any City meters or equipment, and shall notify Township, in writing as provided under this Agreement, of its determination to utilize temporary flow meters as provided under this paragraph. The City shall give Township access to the meters so that the Township can set up their own data telemetry system at Township's expense.

B. Metering. City shall measure wastewater flow and loadings by metering and sampling at Connection Point(s) whenever City, in its discretion, determines that this is necessary, practical and/or economical. Township, upon reasonable notice to City, shall be entitled to jointly inspect the metering equipment maintained by City. City, upon reasonable notice to Township, shall be entitled to jointly inspect the metering equipment maintained by Township. City shall base its operation and maintenance charges on its actual flow and loadings measurements whenever possible and reasonable. In the absence of actual flow and loadings measurements, City shall estimate for billing purposes, using generally accepted engineering judgment, flow(s) and/or strength(s).

C. Sampling.

- (1) City shall have the right, upon verbal notice to Township, to enter the area served by Township at any time to sample Township's wastewater for billing purposes.
- (2) City shall have the right to enter the area serviced by Township at any time for the following purposes:
  - (a) To sample the wastewater of an SIU; or
  - (b) To trace a spill into the wastewater system which is believed to originate in an area served by Township.

In the above instances, City will make a reasonable effort to notify Township in advance.

- (3). Township shall have the right to obtain splits of wastewater samples taken by the City for billing purposes.

#### D. Township Data to be supplied to City

Township shall make the following data available to the City and shall provide revisions and updates upon request if in possession of such information directly or through Township's agents, consultants or contractors:

Geographic Information Systems data in the form of shapefiles, databases, and/or files compatible with ESRI ArcGIS software to include the following features and attribute data:

- The points of connection to the City's interceptor; and
- Any I&I studies and the data related thereto; and
- Any other engineering data or information that the City may request related to the terms and conditions of this Agreement.

#### E. City Data to be Supplied to Township

With regards to the City's points of interconnection with the Township the City shall make available to the Township all data and information specified in paragraph D immediately above.

### **VIII. PRETREATMENT AGREEMENT**

Interjurisdictional Pretreatment Agreement. City and Township shall enter into the contract entitled "Interjurisdictional Pretreatment Agreement" (attached hereto and incorporated herein as Exhibit 2). Township agrees to comply with all of the provisions contained therein including but not limited to adoption of City's most recent Wastewater Control Regulations. Township further agrees to require that any outside jurisdictions which contribute to Township's sewer system also adopt and enforce City's Wastewater Control Regulations.

**IX. DISPUTES**

A. Arbitration of Disputes. In the event of a dispute between the Parties concerning terms, conditions and covenants of this Agreement or upon the issuance by Township of an Objection Letter or Change Objection Letter, City and Township agree to submit the dispute to an Arbitration Panel. All petitions to compel or stay arbitration shall be filed in the Philadelphia County Court of Common Pleas and both City and Township agree to accept venue therein.

B. The Arbitration Panel shall be composed of three (3) arbitrators, one appointed by City, one by Township, and the third by agreement of the arbitrators selected by City and Township.

(1) The arbitrators representing Township and City shall be named within five (5) days from the request for the appointment of an Arbitration Panel. If after a period of ten (10) days from the date of the appointment, the two (2) arbitrators appointed by City and Township cannot agree on the third arbitrator, then either appointed arbitrator may request the American Arbitration Association or its successor to furnish a list of three (3) members of said Association, who are not residents of either Philadelphia or Montgomery counties, from which the third arbitrator shall be selected.

(2) The arbitrator appointed by Township shall then eliminate one (1) name from the list furnished by the American Arbitration Association within five (5) days after its publication, following which the arbitrator appointed by City shall eliminate one (1) name from the list within five (5) days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as Chairman of the Arbitration Panel.

(3) Each of the Parties shall bear the costs of its own arbitrator and shall equally divide the costs of the third arbitrator and all other common costs.

(4) The arbitration proceedings shall commence within thirty (30) days of the selection of the third arbitrator and the arbitrators shall render their determination within thirty (30) days after the final hearing held by the Board of Arbitrators. The decision of such arbitrators shall be final and binding upon the Parties, except in the case of fraud.

(5) Upon mutual agreement of the City and Township, the arbitration may be delayed for a specified period of time in order to allow the Parties additional time for a negotiated

settlement. Any delay in commencement of the arbitration shall last only as long as is agreed to by the Parties.

**X. INDEMNIFICATION**

A. Township agrees to defend, indemnify and save harmless City from and against any and all claims, actions, causes, suits, demands, losses, interest, penalties and liabilities arising from performance of the terms and conditions of this Agreement by reason of:

- (1) City's inability, due to causes beyond its control, to perform any of the provisions of this Agreement;
- (2) Injury (including death) to persons and damages to property resulting from operations under this Agreement to convey Township's wastewater to the Plant(s), where such injury is due to the negligence of Township or its employees, servants or agents or the inherent nature of their operations;
- (3) EPA or PADEP action of any kind whatsoever, whether direct or indirect, for any work undertaken by Township, its contractors or consultants, necessary and required by this Agreement due to rejection of said work by the EPA or PADEP;
- (4) Any grant fund, or any portion thereof, received by Township and later determined to be ineligible for reimbursement by the appropriate regulator agency or grant auditors.

B. City and Township agree that in the event of EPA or PADEP action or any other governmental regulatory action against City of any kind whatsoever, for activities carried out under this Agreement either by City or Township or their employees, servants or agents, City and Township shall equitably apportion responsibility for payment of any costs, fines, penalties or damages arising from such action. Should the City bill Township pursuant to this paragraph, the City shall inform Township as to the nature of the bill.

C. Township shall not be liable for injuries (including death) or property damage occurring during the course of treatment at the Plant(s), except to the extent that such injuries and damages

are due to the negligence of Township or its employees, servants or agents and where such injuries result in a direct increase to City's operating costs. Township shall be responsible for its proportionate share of those increased costs.

D Nothing set forth in this Agreement shall limit or debar City from resorting to any appropriate remedy in law or equity, or any combination of remedies for non-compliance with this section of the Agreement, however, jurisdiction over disputes regarding to this Article shall first be subject to resolution as provided under Article IX of this Agreement.

E. Nothing contained in this Agreement shall be deemed to confer upon any third person any right against City or Township or to vest in said third person any cause of action against City or Township or to authorize any such third person to institute any suit or suits against City or Township.

#### **XI PAPER RERATES**

- (1) If the NEWPCP, or any other POTW servicing flows from the Township, is rerated without any physical expansion paid exclusively by the City, the Township's charges shall be adjusted accordingly to reflect Township's new proportionate share of the rerated facility.
- (2) If City requires contribution by Township to increase the rated capacity of the NEWPCP, or any other plant servicing the Township's flows, Township shall receive an increase in its capacity of wastewater flow to such plant proportionate to its contribution to the physical improvements to the plant which resulted in the increase in plant capacity.

#### **XII.**

#### **MISCELLANEOUS**

A. Inspection and Audit. City and Township agree to maintain complete records and accounts concerning their responsibilities under this Agreement. Both Parties shall at all times have the right to examine and inspect said records and accounts upon thirty (30) days written

notice. If required by any law or regulation, Township shall make said records and accounts immediately available to federal and state authorities.

B. No Transfer of Rights. Township shall not confer, transfer, convey, assign or license to any third party any rights obtained under this Agreement including but not limited to assignment of wastewater treatment capacity without the express prior written consent of City.

C. Ownership, Management and Control of Plant Facilities. City retains sole ownership and control of the NEWPCP and all other wastewater conveyance and treatment facilities in the City and agrees to operate, maintain, repair, and improve its facilities associated with service to Township. City retains the sole and exclusive right to make all managerial and other decisions regarding its wastewater facilities, including but not limited to those decisions regarding operation, maintenance, upkeep, expansion, abandonment or replacement of all or a portion of its wastewater facilities.

D. Successors and Assigns. All the covenants contained in this Agreement shall extend to and bind the respective successors and assigns of the Parties hereto with the same effect as if the words "successors and assigns" had, in each case, been specifically mentioned.

E. Waiver. The failure of either City or Township to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights herein granted, unless specifically stated in this Agreement.

F. Captions. The captions in this Agreement are for convenience only and are not part of the Agreement. The captions do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

G. Entire Agreement. This Agreement and its Exhibits, incorporated herein, represent the entire agreement of the Parties hereto and there are no collateral or oral agreements or understandings. This Agreement may be amended or modified only in writing signed by both City and Township. This Agreement supersedes all previous wastewater agreements between City and Township.

H. Severability. In the event any provision hereof is held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then continue in full force as if such illegal or invalid provision had not been contained herein.

I. Notices. All notices, payments and communications required to be given in writing under this Agreement shall be sent by certified United States mail, postage prepaid and by email communication or delivered by hand delivery with receipt obtained, to the addresses below or at such other addresses as City or Township may designate in writing from time to time:

If intended for City:

Water Commissioner  
City of Philadelphia Water Department  
1101 Market Street, 5<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19107

If intended for Township:

Township Manager  
Cheltenham Township  
8230 Old York Road  
Elkins Park, PA 19027

J. Withdraw of Appeal

Township shall, upon the signing of this Agreement, withdraw with prejudice its Notice of Appeal filed with the Environmental Hearing Board regarding the Sanitary Flow Diversion Valve (SFDV) installed by the City. The Parties will work together to ensure the proper operation of the SFDV.

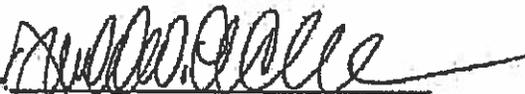
[REMAINDER OF THIS PAGE BLANK – SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, The City of Philadelphia has caused this Agreement to be executed by its Water Commissioner, and the Township, acting through its duly authorized officials, has executed this Agreement on behalf of Township, as of the day and year first above written.

CITY OF PHILADELPHIA

By:   
Bernard Brunwasser  
Commissioner, Philadelphia Water Department

Approved as to form:

By:   
Gerald D. Leatherman  
Divisional Deputy City Solicitor

TOWNSHIP OF CHELTENHAM

By:   
Morton J. Simon Jr. President  
Board of Commissioners

Attest:

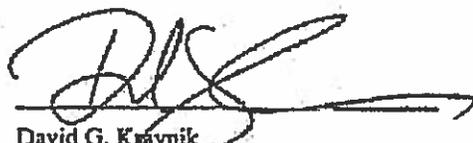
  
David G. Krzynek  
Township Manager and Secretary

EXHIBIT 1

POINTS OF CONNECTION AND MAXIMUM FLOW RATES  
CHELTEMHAM TOWNSHIP INTO CITY OF PHILADELPHIA

Maximum Flow (CFS)	Points of Connection
18*	Tookany Creek north of Adams Avenue
2.75	Cheltenham Avenue at Bouvier Street

\* In excess of wastewater originating from within the lines of the City Philadelphia which shall have a maximum flow rate not to exceed a total aggregate of eight cubic feet per second (8 cfs).

\*\*\*\*\*

CITY OF PHILADELPHIA INTO CHELTEMHAM TOWNSHIP

City Connection	Maximum Flow	Pipe Size	Points of Connection
1	8 CFS	10"	Cottman Avenue and Murchison Avenue
2		15"	County Line on a Line of St. Vincent Street Extended
3		10"	County Line, North of Longshore Avenue
4		10"	County Line, North of Karpur Street
5		10"	County Line on a Line of Passmore Street
6		10"	County Line on a Line of Devereaux Street
7		10"	County Line on a Line of Conly Road Extended

10

**EXHIBIT 2**

**INTERJURISDICTIONAL PRETREATMENT AGREEMENT  
BETWEEN  
THE CITY OF PHILADELPHIA  
AND  
CHELTENHAM TOWNSHIP**

**RECITAL**

Whereas, City owns and operates a wastewater collection and treatment facilities; and  
Whereas, Township will be utilizing the City's Wastewater Treatment Services pursuant to the attached Wastewater Service Agreement between City and Township; and

Whereas, City must develop and implement an industrial pretreatment program pursuant to conditions contained in its discharge permits (Permit # PA0026671, PA0026689 and PA0026662) issued by the Pennsylvania Department of Environmental Protection; and

Whereas, Township desires to continue to utilize the Wastewater Treatment Services and recognizes its industrial waste control obligations under 40 CFR § 403 and the City's Wastewater Control Regulations.

In consideration of the following terms and conditions City and Township agree:

1. No later than three (3) months after the effective date of the City's current Wastewater Control Regulations, Township shall adopt and diligently enforce rules and regulations (hereinafter "regulations") substantially identical to the City's current Wastewater Control Regulations. Should the City amend its Wastewater Control Regulations, Township shall adopt and diligently enforce the amendment within three (3) months from the amendment's effective date. Also, Township shall ensure that any outside jurisdictions which contribute to Township's sewer system adopt the regulations and any amendments to the regulations within three (3) months of adoption by the Township.
2. Township shall explicitly incorporate the following provisions into its regulations:

- (a) a provision requiring any Industrial User responsible for any accidental discharge to notify both City and Township immediately;
  - (b) a prohibition on the use of dilution as a control technique for compliance with discharge limits except as allowed by Federal Pretreatment Standards;
  - (c) a grant of authority to impose mass discharge limits in lieu of, or in conjunction with, concentration discharge limits;
  - (d) a prohibition against, and a penalty for, the knowing transmittal of false information by an Industrial User to either City or Township; and
  - (e) a grant of explicit authority to City to require the Industrial User(s) to install monitoring and pretreatment facilities as necessary.
3. City and Township shall periodically, at a minimum of every five (5) years, review their respective regulations and jointly draft and adopt equivalent amendments where necessary to ensure the effective administration and operation of the pretreatment program. Whenever City becomes aware of a problem with the pretreatment program which can be mitigated by a change in regulation, City may draft an amendment which Township must adopt substantially in such form within three (3) months of promulgation by the City. If Township has adopted regulations identical to the City's regulations, then, whenever City amends its regulations, Township shall adopt the identical amendment(s) within three (3) months of adoption by the City.
4. Township shall adopt, as part of its regulations, and enforce specific discharge limits at least as stringent as the specific discharge limits established in City regulations.
5. Township's regulations shall require that categorical pretreatment standards promulgated by the U.S. Environment Protection Agency (EPA) by authority of the Clean Water Act Sections 307(b) and (c) be automatically incorporated by reference into Township's regulations. These standards shall supersede any specific discharge limits in the ordinance which are less stringent than the categorical standards as they apply to the particular industrial subcategory. Township shall notify all affected Industrial Users of pertinent categorical standards and monitoring and reporting requirements contained in 40 CFR 403.12 or included as part of the categorical standards.
6. Township shall adopt in its regulations definitions for "Significant Industrial User," "Industrial User" and "Non-domestic User" which are identical to the definitions adopted

by City. City may make the final determination as to whether a particular industrial user is a Significant Industrial User, Industrial User or Non-domestic User based on information City may request from Township. City shall control, through industrial discharge permits, industrial waste discharges from each Significant Industrial User, Industrial User or Non-domestic User discharging into the sewer.

7. If there exists any Industrial Users discharging to Township's sewer system but located outside the jurisdictional limits of Township, then Township shall within thirty (30) days from the date of the Wastewater Service Agreement notify such jurisdiction of the requirements contained within this Interjurisdictional Pretreatment Agreement ("IP Agreement") and provide the City with copies of such notification. Township shall negotiate and enter into an agreement with this outside jurisdiction within six (6) months from the date of the Wastewater Service Agreement. Such agreement shall be substantially equivalent to this IP Agreement, and shall be jointly executed by Township, City and the outside jurisdiction. The agreement shall specifically state that the outside jurisdiction must also adopt regulations substantially identical to the City's Wastewater Control Regulations and shall adopt all amendments thereto within three (3) months from their effective date. Such agreement shall insure that the City has the same rights, powers and authority to operate its industrial pretreatment program in the outside jurisdiction as it has within the area served by Township. If Township is unable to reach agreement with the outside jurisdiction within six (6) months, then Township shall immediately thereafter take all necessary steps to prevent all discharges from Industrial Users within the outside jurisdiction to Township.
8. Township shall file with City a certified copy of its ordinance, any amendments thereto, and other interjurisdictional agreements. Township shall provide a table to the City cross-referencing sections of its ordinance with the City's Wastewater Control Regulations in order to demonstrate that all provisions contained in the City's Wastewater Control Regulations have been incorporated into Township's ordinance. If requested, Township shall provide City access to and copies of all industrial monitoring reports including 40 CFR §403.12 compliance reports, self-monitoring reports, baseline reports, records of violations and actions taken, and any other monitoring or reporting requirements imposed by federal, state or local regulations. These records and other relevant information shall be maintained for at least six (6) years.

9. Any authorized officer or employee of City may enter and inspect at any reasonable time any part of the sewer system of Township. The right of entry and inspection shall extend to public streets, easements, and property within which the system is located. Additionally, City shall be permitted, as appropriate, to enter onto private property to inspect industrial waste discharges. Township shall provide complete sets of sewer plans and make all necessary legal and administrative arrangements for these inspections. The right of inspection shall include on-site inspection of pretreatment and sewer facilities, observation, measurement, sampling, testing, and access to (with the right to copy) all pertinent compliance records located on the premises of the Industrial User or Non-domestic User.
10. Township and City hereby agree that the City shall implement a pretreatment program within the area served by Township and shall perform in connection therewith technical and administrative activities which may include: 1) updating the industrial waste survey; 2) providing technical services, such as sampling, process chemical analysis, and engineering advice; 3) permitting; 4) compliance monitoring; 5) enforcement; and 6) monitoring hazardous waste disposal practices.
11. City shall review Township's ordinance and amendments thereto, and any interjurisdictional agreements for conformance with 40 CFR Part 403, and to ensure inclusion of all other legal provisions mandated by this IP Agreement. City shall periodically review the enforcement efforts of Township and any other jurisdiction to ascertain whether pretreatment requirements are being diligently enforced.
12. If City determines that Township has failed or has refused to fulfill any pretreatment obligations, including, but not limited to, any obligations contained within this IP Agreement, City may develop and issue a remedial plan containing a description of the nature of the pretreatment deficiencies, an enumeration of steps to be taken by Township, and a time schedule for attaining compliance with all pretreatment requirements. Such plans shall be specifically enforceable in a court of competent jurisdiction. Where Township fails to satisfy the terms of the remedial plan, City may, upon thirty (30) days written notice, refuse to accept any industrial waste discharges from Township.
13. In the event that EPA or PADEP action results in fines, penalties or costs being assessed against City because of industrial or non-domestic waste discharged from Township,

Township and City shall equitably apportion responsibility for payment of such fines, penalties or costs.

14. Where a discharge to the wastewater collection and treatment facilities reasonably appears to present an imminent danger to the health and welfare of persons, or presents or may present an imminent danger to the environment, or threatens to interfere with the operation of the wastewater collection and treatment facilities, City may immediately initiate steps to identify the source of the discharge and to hold or prevent said discharge. City may seek injunctive relief and/or may pursue other self-help remedies against Township, outside jurisdictions, and/or any Industrial User or Non-domestic User contributing to the emergency conditions. Township shall pay to City the cost of such steps specified in reasonable detail and submitted in writing to Township taken to prevent, stop or ameliorate the effects of such discharge.
15. All provisions of this IP Agreement apply only to areas and properties within the Township from which flows, directly or indirectly, enter the City's wastewater collection and treatment facilities. This IP Agreement does not apply to any area or property within the Township from which flows do not enter the City's wastewater collection and treatment facilities.
16. Any disputes arising out of this IP Agreement shall be submitted to binding arbitration performed in accordance with the procedures set forth in the Wastewater Service Agreement between Township and City, as amended.
17. The terms of this IP Agreement may be amended only by written agreement of the parties. In any event, this IP Agreement shall be reviewed and revised, as necessary, at least every five (5) years.
18. This IP Agreement modifies only those provisions of the existing Wastewater Service Agreement between the two parties which conflict with the terms of this IP Agreement.
19. This IP Agreement will remain in effect so long as the Wastewater Service Agreement remains in effect. Termination of the Wastewater Service Agreement shall also result in the termination of this IP Agreement.

IN WITNESS WHEREOF, the City of Philadelphia has caused this Interjurisdictional Pretreatment Agreement to be executed by its Water Commissioner, and President of the Board of Commissioners of Cheltenham Township has executed this Agreement on behalf of Cheltenham Township, as of the Effective Date of the Wastewater Service Agreement.

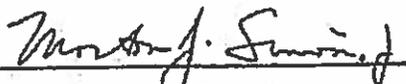
CITY OF PHILADELPHIA

By:   
Bernard Brunwasser  
Commissioner, Philadelphia Water Department

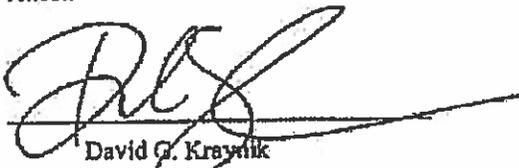
Approved as to form:

By:   
Gerald D. Leatherman  
Divisional Deputy City Solicitor

CHELtenham TOWNSHIP

By:   
Morton J. Simon, President  
Board of Commissioners

Attest:

  
David G. Kraylik  
Township Manager and Secretary

**Exhibit 3**

**The following eleven (11) pages constitute Exhibit 3.**

**TABLE A - 15**  
**UNITS OF WASTEWATER SERVICE**  
**Test Year 2009**

Line No.	(1)	(2)
	Units	Cheltenham
<b>FY 2009 Test Year</b>		
<b>Volume</b>		
1	Sanitary Wastewater (Mcf)	361,000
2	Infiltration (Mcf)	<u>9,800</u>
3	<b>Total</b> (Mcf)	<b>370,800</b>
<b>Suspended Solids</b>		
4	Sanitary Wastewater (1,000 lbs)	2,996
5	Infiltration (1,000 lbs)	<u>61</u>
6	<b>Total</b> (1,000 lbs)	<b>3,057</b>
<b>BOD</b>		
7	Sanitary Wastewater (1,000 lbs)	2,636
8	Infiltration (1,000 lbs)	<u>15</u>
9	<b>Total</b> (1,000 lbs)	<b>2,651</b>
<b>Contract Maximum Units</b>		
<b>Capacity</b>		
10	Sanitary Wastewater (Mcf/day)	1,793
11	Infiltration (Mcf/day)	<u>40</u>
12	<b>Total</b> (Mcf/day)	<b>1,833</b>
<b>Volume</b>		
13	Sanitary Wastewater (Mcf)	654,370
14	Infiltration (Mcf)	<u>9,800</u>
15	<b>Total</b> (Mcf)	<b>664,170</b>
<b>Suspended Solids</b>		
16	Sanitary Wastewater (1,000 lbs)	5,431
17	Infiltration (1,000 lbs)	<u>61</u>
18	<b>Total</b> (1,000 lbs)	<b>5,492</b>
<b>BOD</b>		
19	Sanitary Wastewater (1,000 lbs)	4,777
20	Infiltration (1,000 lbs)	<u>15</u>
21	<b>Total</b> (1,000 lbs)	<b>4,792</b>

Mcf - thousand cubic feet  
Mcf/day - thousand cubic feet per day  
lbs - pounds

TABLE A - 2

ALLOCATION OF TEST YEAR INVESTMENT FOR THE  
NORTHEAST WATER POLLUTION CONTROL PLANT TO FUNCTIONAL COST COMPONENTS  
Test Year 2009

Line No.	Description	(1) Total Investment \$1,000	(2) % Lower Sewage Capacity \$1,000	(3) Volume \$1,000	(4) Capacity \$1,000	(5) Sewerage Tolids \$1,000	(6) BOC \$1,000
<b>NON-WATER POLLUTION ABATEMENT PROGRAM FACILITIES</b>							
1	Primary Sedimentation Basins	4,347		4,347			
2	Pumping Station	1,372			1,372		
3	Aeration Facilities	16,348					16,348
4	Primary Sludge Pumps	1,097				1,097	
5	Sewer Lifters	173				173	
6	Effluent Control	9			9		
7	Final Sedimentation Basins	4,804		4,804			
8	Reaeration Pumps	1,549		1,549			
9	Digesters	10,643				10,643	4,211
10	Sludge Dewatering	4,047				4,047	1,072
11	Proximal O <sub>2</sub> Chlorine	334			334		
12	Chlorination Facilities	3,408			3,408		
13	Aeration Tank No. 1	1,133					1,133
14	Sludge Thickening Building	3,401				1,701	1,700
15	Sludge Transfer Station	774				634	213
16	Subtotal AS Above	16,260		10,100	7,343	19,295	24,212
17	Administrative and Control Facilities						
18	Administrative and Control Plant	46,644					
19	Land	524					
20	Subtotal	47,398		10,712	7,343	19,295	17,586
21	Total Non-Water Pollution Abatement Program Facilities	113,216		21,112	17,343	33,277	41,298
<b>WATER POLLUTION ABATEMENT PROGRAM FACILITIES</b>							
22	New Preliminary Treatment Building	41,236	10,150		31,086		
23	Primary Sedimentation Tanks Modification	13,284		13,284			
24	Blower Building	14,703					(6,703)
25	Aeration Tank No. 1	28,944					28,944
26	Chlorination Facilities	21,983			21,983		
27	New Sludge Thickening Building	41,830				20,915	20,915
28	Effluent Control	3,372			3,372		
29	New Final Sedimentation Tanks	25,203		25,203			
30	Sludge Dewatering System Modification	24,794				24,066	8,688
31	Composting Facilities	30,280				31,710	7,370
32	Sludge Dewatering	12,376				9,687	3,449
33	Sludge Transfer Station	14,681				18,311	4,170
34	Landfill Treatment Works	3,374				6,145	5,211
35	Subtotal	349,873	10,330	77,972	37,312	101,690	102,416
36	Admin. and Control Facilities	48,016	1,471	19,217	7,376	13,982	14,209
37	Adjustment for Joint Use Facilities	4,872				3,458	1,412
38	Total Water Pollution Abatement Program Facilities	402,761	11,771	97,179	44,688	119,110	118,037
39	TOTAL NORTHEAST WPC PLANT BOOK COST	516,077	11,771	113,174	62,031	152,387	161,843
40	Less Project Costs	249,233	7,721	59,864	41,310	78,298	70,216
41	ADJUSTED TOTAL NORTHEAST WPC PLANT INVESTMENT	266,844	4,050	53,310	20,721	74,089	91,627

TABLE A - 5

TEST YEAR INVESTMENT IN THE WASTEWATER SYSTEM  
 SUMMARY OF ALLOCATIONS TO FUNCTIONAL COST COMPONENTS  
 Test Year 2009

Line No.	Cost Component	Total Direct Investment (\$)
		\$
	<b>COLLECTION SYSTEM</b>	
1	Sewers - Capacity	1,000,672,000
2	Pumping Stations - Capacity	29,221,000
3	Total Collection System	1,029,894,000
	<b>WATER POLLUTION CONTROL PLANTS</b>	
	<b>Northeast Plants:</b>	
4	Retail, Abington, Bensalem, Bucks County W&SA, Lower Merion, & Lower Southampton - Capacity	4,040,000
	Retail, Abington, Bensalem, Bucks County W&SA, Cliftonham, Lower Merion, and Lower Southampton	
5	Volume	56,746,000
6	Capacity	34,179,000
7	Suspended Solids	73,507,000
8	BOD	82,819,000
9	Subtotal	247,251,000
10	Total Northeast Plants	251,291,000
11	Other Plants	288,194,000
12	Total Water Pollution Control Plants	539,485,000
13	Total Investment	1,569,379,000

(\*) Includes Administration and General costs.

**TABLE A - 16**  
**WATER POLLUTION CONTROL PLANT INVESTMENT PER UNIT OF CAPACITY**  
**Test Year 2009**

Line No.	Cost Component	Direct Investment	Units of Capacity	Unit Investment
		(1)	(2)	(3)
		\$		\$
1	Northeast Water Pollution Control Plant Retail, Abington, Bensalem, Bucks County W&SA, Lower Moreland, and Lower Southampton - Capacity	4,040,000	370 mgd = 49,470 Mcf/day	81,5657 /Mcf/day
2	Cheltenham, Lower Moreland, and Lower Southampton Volume	56,746,000	76,650 mg = 10,247,000 Mcf	5,5378 /Mcf
3	Capacity	34,179,000	420 mgd = 56,150 Mcf/day	608,7088 /Mcf/day
4	Suspended Solids	73,507,000	173,240,000 lbs	424,3073 /1,000 lbs
5	BOD	82,819,000	128,491,000 lbs	644,5510 /1,000 lbs

mg - million gallons  
mgd - million gallons per day  
Mcf - thousand cubic feet  
Mcf/day - thousand cubic feet per day  
lbs - pounds

TABLE A - 20

WASTEWATER SYSTEM INVESTMENT  
 ALLOCATED TO  
 CHELTENHAM TOWNSHIP  
 Test Year 2009

Line No.	Comp Component	Units	Investment Per Unit	Number of Contract Units	Infiltration/Inflow Capacity Allocation Factor	Allocated Investment	Allocated Investment Rounded
			\$			\$	\$
<b>Treatment</b>							
Retail, Abington, Bensalem, Bucks County W&S, Lower Moreland, and Lower Southampton							
1	Capacity	Mcf/day		1,833			
Retail, Abington, Bensalem, Bucks County W&S, Cheltenham, Lower Moreland, and Lower Southampton							
2	Volume	Mcf	5,5378	664,170		3,678,041	3,678,000
3	Capacity	Mcf/day	608,7888	1,833		1,115,763	1,116,000
4	SS	1,000 lbs	424,3073	5,492		2,330,296	2,330,000
5	BOD	1,000 lbs	644,5310	4,792		3,088,688	3,089,000
6	Total Treatment					10,212,788	10,213,000
<b>Conveyance</b>							
Cheltenham and Tacony Creek							
7		cfs	15,378	18.00	1.02250	281,032	283,000
8	Bonvier Street	cfs	23,315	2.75	1.02250	65,559	66,000
9	Total Conveyance					348,591	349,000
10	Total Allocated System Investment					10,561,379	10,562,000

cfs - cubic feet per second  
 Mcf - Thousand cubic feet  
 lbs - pounds

TABLE A-7

ALLOCATION OF TEST YEAR OPERATION AND MAINTENANCE EXPENSE FOR THE  
NORTHEAST WPC PLANT TO FUNCTIONAL COST COMPONENTS  
Test Year 2008

Line No	Description	(1)	(2)		(4)	(5)		(6)	(7)
		Total Operation & Maintenance Expense	Reul, Abingon, Beaman, Bucks County WASA, Lower Merion, and Lower Schuylkill		Value	Reul, Chuberton, Abingon, Beaman, Bucks County WASA, Lower Merion, and Lower Schuylkill		Suspended Solids	BUSD
			Volume	Capacity		Volume	Capacity		
		\$	\$	\$	\$	\$	\$	\$	
<b>Personal Services</b>									
1	Raw Wastewater Pumping	831,472		831,472					
2	Preliminary Treatment	1,266,251			899,393	347,237			
3	Primary Sedimentation	211,223			211,223				
4	Aeration	1,112,760							1,112,760
5	Secondary Sedimentation	215,777			513,749				
6	Recirculating Pumping	180,023			383,023				
7	Chlorination	357,403			218,017	139,288			
8	Primary Sludge Pumping	104,003					194,825		
9	Secondary Sludge Thickening	23,258					126,475	126,475	
10	Sludge Digestion	1,390,601					1,492,827	997,827	
11	Sludge Holding Tanks	164,772					188,570	36,193	
12	Sludge Dewatering	364,433					274,840	91,413	
13	Grit and Screening Inclusion	814,348			543,408	248,232			
14	Scum and Grease Inclusion	194,437					194,237		
15	Laboratory	674,073					337,047	337,047	
16	Subtotal Personal Services	10,137,594		631,473	3,070,017	775,478	2,618,690	1,201,929	
<b>Purchase of Services, Materials, Supplies, and Equipment</b>									
17	Raw Wastewater Pumping	194,214		194,214					
18	Preliminary Treatment	307,063				307,063			
19	Primary Sedimentation	143,937			143,937				
20	Aeration	215,905							215,905
21	Secondary Sedimentation	163,277			163,277				
22	Recirculating Pumping	63,373			63,373				
23	Chlorination	3,019,433			3,019,433				
24	Primary Sludge Pumping	26,388					26,388		
25	Secondary Sludge Thickening	31,164					19,395	15,593	
26	Sludge Digestion	405,411					304,066	101,315	
27	Sludge Holding Tanks	57,573					41,381	14,394	
28	Sludge Dewatering	47,580					24,383	11,395	
29	Grit and Screening Inclusion	129,541				129,541			
30	Scum and Grease Inclusion	33,984					31,984		
31	Laboratory	278,237					139,129	139,129	
32	Subtotal Purchase of Services, Materials, Supplies & Equipment	5,182,529		194,214	3,461,761	636,661	995,516	677,780	
33	Subtotal All Above	13,576,123		845,788	6,531,778	1,212,039	3,237,326	1,609,219	
<b>Administrative and General:</b>									
34	Personal Services	2,660,176		167,443	190,000	199,154	679,013	823,956	
35	Other	423,905		16,160	297,861	26,312	48,778	41,299	
36	Subtotal Administration & General	3,084,081		183,603	1,077,861	225,466	727,791	665,255	
<b>Plant Requirements:</b>									
37	Raw Wastewater Pumping	466,170	296,413	49,793					
38	Preliminary Treatment	3,134			3,276	176			
39	Primary Sedimentation	30,234			36,209	4,613			
40	Aeration	2,355,401							2,355,401
41	Secondary Sedimentation	30,836			24,209	4,423			
42	Recirculating Pumping	187,920			91,732	16,188			
43	Chlorination	7,709			6,533	1,136			
44	Primary Sludge Pumping	3,334					3,854		
45	Secondary Sludge Thickening	239,873					144,537	144,236	
46	Sludge Digestion	61,533					48,142	16,281	
47	Sludge Holding Tanks	69,377					59,613	19,344	
48	Sludge Dewatering	61,669							
49	Grit and Screening Inclusion	2,134			37,119	9,230	3,854		
50	Scum and Grease Inclusion	3,690,377	396,413	69,725	204,290	38,427	231,420	2,733,647	
51	Sludge Disposal	12,471,320					9,403,420	3,167,900	
52	Total Northeast WPC Pts of Expense	34,748,311	776,419	1,077,544	7,813,773	1,444,373	13,712,843	10,446,543	

**TABLE A - 11**  
**TEST YEAR OPERATION AND MAINTENANCE EXPENSE**  
**SUMMARY OF ALLOCATIONS TO FUNCTIONAL COST COMPONENTS**  
**Test Year 2009**

Line No.	Cost Component	(1)	(2)	(3)	(4)	(5)	(6)
		Direct Operation & Maintenance Expense	Administrative & General Expense	Total Operation & Maintenance Expense	Less Interest Income	O&M Expense Deductions Less Grants	Net Operation & Maintenance Expense
		\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
<b>COLLECTION SYSTEM</b>							
<b>Sewer Maintenance</b>							
1	All Customers - Capacity	21,163	11,565	32,708	227	0	32,481
2	Inlet Clearing	9,495	5,180	14,675	102	0	14,573
3	Recall - Storm Capacity	2,562	0	2,562	17	0	2,545
4	Pumping Stations	10,212	5,328	15,547	100	0	15,439
5	Capacity	56,230	27,381	83,601	579	0	83,022
<b>WATER POLLUTION CONTROL PLANTS</b>							
<b>Northeast Plant:</b>							
Retail, Abington, Bensalem, Bucks County W&SA, Lower Merion & Lower Southampton							
6	Volume	396	0	396	3	2	391
7	Capacity	1,100	259	1,659	12	7	1,640
<b>Retail, Abington, Bensalem, Bucks County W&amp;SA, Cheltenham, Lower Merion, and Lower Southampton</b>							
8	Volume	7,816	4,094	11,910	83	51	11,776
9	Capacity	1,404	783	2,257	16	10	2,241
10	Suspended Solids	13,818	7,390	21,208	147	91	20,970
11	BOD	10,467	4,210	14,677	102	63	14,512
12	Other Plants:	43,610	20,803	64,413	449	216	63,888
13	Total Water Pollution Control Plants	70,691	37,809	116,530	812	500	115,218
14	<b>CUSTOMER COSTS</b>	25,070	14,112	39,902	278	0	39,704
15	Total Operation & Maintenance Expense	160,781	79,332	240,113	1,669	500	237,944

**TABLE A - 28**  
**UNIT PUMPING AND TREATMENT OPERATION AND MAINTENANCE EXPENSE**  
**APPLICABLE FOR CONTRACT SERVICE**  
**Test Year 2009**

Line No.	Cost Component	(1) Net Operating Expense	(2) Projected TX Units of Service	(3) Unit Operating Expense \$/Unit
<b>WATER POLLUTION CONTROL PLANTS</b>				
Northeast Water Pollution Control Plant				
Retail, Abington, Bensalem, Bucks County W&SA, Lower Moreland, and Lower Southampton				
1	Volume	391,000	6,499,000 Mcf	0.0602
2	Capacity	1,640,000	39,280 Mcf/day	41.7515
Retail, Abington, Bensalem, Bucks County W&SA, Cheltenham, Lower Moreland, and Lower Southampton				
3	Volume	11,776,000	8,283,000 Mcf	1.3408
4	Capacity	2,241,000	53,084 Mcf/day	42.2161
5	Suspended Solids	20,970,000	115,646 1,000 lbs	181.3292
6	BOD	14,512,000	78,503 1,000 lbs	184.8592

Mcf - thousand cubic feet  
Mcf/day - thousand cubic feet per day  
lbs - pounds

**TABLE A - 32**  
**OPERATING EXPENSE**  
**ALLOCATED TO**  
**CHELtenham TOWNSHIP**  
**Test Year 2009**

Line No.	Cost Component	(1) Allocated Investment \$	(2)		(3) Allocated Operating Expenses \$
		<u>Operating Expense Per Unit</u>	<u>Test Yr. No. of Units</u>		
<b>Collection Systems</b>					
1	Sewer Maintenance (a)	349,000	4	3.20%	11,168
<b>NE Treatment Plants: Retail, Abington, Bensalem, Bucks County WWSA, Lower Merion, and Lower Southampton</b>					
11	Volume	NA	3/Mcf	370,800	Mcf
12	Capacity	NA	3/Mc/day	1,833	Mc/day
<b>Retail, Abington, Bensalem, Bucks County WWSA, Cheltenham, Lower Merion, and Lower Southampton</b>					
13	Volume	1,3408	3/Mcf	370,800	Mcf
14	Capacity	42,3161	3/Mc/day	1,833	Mc/day
15	Suspended Solids	181,3292	\$/1,000 lbs	1,037	1,000 lbs
16	BOD	184,8592	\$/1,000 lbs	2,651	1,000 lbs
17	Customer Costs				<u>33,700</u>
18	Total				1,663,804
19	Total - Rounded				1,664,000

Mcf - Thousand cubic feet  
 lbs - pounds

(a) Based on investment in sewers serving Cheltenham.

**TABLE A - 40**  
**SUMMARY OF ALLOCATED COST OF SERVICE**  
**Test Year 2009**

Customer	(1) Allocated Investment	(2) Allocated Depreciable Investment	(3) O&M Expense	(4) Depreciation Electric	(5) Return on Investment	(6) Allocated Cost of Service
	\$	\$	\$	\$	\$	\$
Chickadee	10,567,000	10,532,000	1,664,000	261,000	792,000	2,717,000

**TABLE A - 49**  
**SUMMARY OF TEST YEAR CHARGES**  
**Test Year 2009**

Customer	(1)	(2)	(3)	(4)	(5)
	Annual Lease Sum	Volume	Capacity (a)	Suspended Solids	BOD
	\$	\$/Mcf	\$/cfs	\$/1,000 lbs	\$/1,000 lbs
Chickamauga	1,098,000	1,3892	3,731	184.9134	185.9625

Mcf - Thousand cubic feet  
cfs - cubic feet per second  
lbs - pounds

(a) Annual Cost.

**CHELTENHAM TOWNSHIP**

**ORDINANCE NO. \_\_\_\_\_**

**LOCAL LANDMARK ORDINANCE**

**AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF CHELTENHAM, ESTABLISHING CHAPTER 175, ENTITLED "LOCAL LANDMARKS"; PROVIDING CRITERIA FOR QUALIFICATION AS LOCAL LANDMARKS; PROVIDING FOR CERTIFICATES OF APPROPRIATENESS; AND PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE.**

**SECTION 1.** The Board of Commissioners hereby adopts the following as Chapter 175, entitled "Local Landmarks".

**§ 175-1. Purpose.**

- A. It is the purpose and intent of this ordinance to protect and enhance the special character and historic interest of the Local Landmarks in Cheltenham Township in the interest of the health, prosperity, safety, and welfare of the people. The additional purposes of this Chapter are to:
- (1) Protect and enhance designated Local Landmarks which reflect the Township's cultural, social, economic, political, and architectural history;
  - (2) Safeguard the Township's historic and cultural heritage as embodied within the Local Landmarks;
  - (3) Promote appreciation of Local Landmarks for the education and enjoyment of local residents;
  - (4) Encourage beautification and private investment in the Township's Local Landmarks to enhance the visual character of the community;
  - (5) Stabilize and improve property values; and
  - (6) Foster civic pride in the history and architectural integrity of the Township.

**§ 175-2. Definitions.**

For the purposes of this Chapter, the following terms shall have the meanings indicated:

**CERTIFICATE OF APPROPRIATENESS (COA)** - Document issued by the Board of Commissioners, following a prescribed review procedure, certifying that the proposed actions by an applicant related to Demolition or Relocation are found to be acceptable in terms of criteria relating to the individual Local Landmark, pursuant to the criteria enumerated in this Chapter.

**DEMOLITION** - The razing or destruction of a Local Landmark, or a separate object or Structure at the location of a Local Landmark.

**DEMOLITION BY NEGLIGENCE** - The absence of routine maintenance and repair leading to a Local Landmark's inability to be rehabilitated and reused or a Local Landmark's structural weakness, decay, and/or deterioration, and effectively advancing its demolition, whether by ordinary negligence or willful neglect, purpose or design, by the owner or any party in possession thereof. Demolition by neglect shall also include leaving a Local Landmark open to decay by the elements or vulnerable to vandalism.

**DENIAL** - The written rejection of an application for work that is determined to be inappropriate due to the fact that it adversely impacts a Local Landmark.

**DEPARTMENT** – The Cheltenham Township Department of Planning and Zoning or the department from time to time fulfilling the same functions.

**LOCAL LANDMARK** - Any building, Structure, Site, or object which possesses integrity of location, design, setting, materials, and workmanship and which has been included in the Cheltenham Township Cultural Resources Survey. The initial Cheltenham Township Cultural Resources Survey is attached hereto as Exhibit A. The survey may be updated and amended from time to time and the current form will be available at the Township Administration Building. Local Landmark includes any building, Structure, Site, object or district listed or eligible for listing on the National Register of Historic Places. Local Landmarks may be located within designated Historical Districts (defined in and also regulated by Chapter 295, Article XX) if they are listed or eligible for listing on the National Register of Historic Places, or they may be on Sites outside of the designated H-D Historical District located throughout the Township.

**PRESERVATION** - The act or process of applying measures necessary to sustain the existing form, integrity, and materials of a Local Landmark. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

**RECONSTRUCTION** - The act or process of reproducing, by means of new construction, the form, features, and detailing of a non-surviving Site, building, Structure, or object for the purpose of replicating its appearance at a specific period of time and/or in its historic location.

**REHABILITATION** - The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

**RELOCATION** – Movement of a building, Structure, object, or any part thereof from one Site to another location, which Relocation makes the new location a Local Landmark.

**REPAIR** – The act or process of restoring a decayed or damaged resource to a sound condition.

**REPLACEMENT** - The act of replicating any exterior architectural feature in order to substitute for an existing deteriorated or extensively damaged architectural feature.

**RESTORATION** - The act or process of accurately reproducing the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period that is selected.

**SITE** - The place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupations or activities that may be marked by physical remains; or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A Site may also be the location of a ruined building, Structure, or object, or the location itself possesses historic, cultural, or archeological significance.

**STRUCTURE** – A construction regardless of its state or condition of disrepair for the purposes of occupancy, use, or ornamentation, having a fixed location on, above, or below the surface of land. Structures include, but are not limited to, buildings, flagpoles, fences, gazebos, pergolas, canopies, freestanding signs, permanent signs, walls, paved parking areas, and driveways.

**§ 175-3. Designation of Local Landmarks.** For the purpose of this Chapter, any resource, located outside of the H-D Historical District, on a site meeting at least one of the following criteria shall be designated a Local Landmark:

- (1) each resource identified in the Cheltenham Township Cultural Resources Survey (Exhibit A hereto, on file with the Township of Cheltenham), as updated and amended from time to time;
- (2) each resource listed in the National Register of Historic Places;
- (3) each resource determined to be eligible for listing in the National Register of Historic Places.

**§ 175-4. Planning Commission.**

The “Planning Commission”, as described fully in the Cheltenham Township Charter, Article XIII, Citizens’ Groups, § C1305 PC, shall be responsible for reviewing and recommending to the Public Works Committee of the Board of Commissioners applications for Demolition or Relocation of Local Landmarks.

**§ 175-5. Public Works Committee of the Board of Commissioners.**

The Public Works Committee shall be responsible for reviewing and recommending to the Board of Commissioners actions to take regarding applications for projects concerning Local Landmarks.

**§ 175-6. Certificate of Appropriateness review procedure for Demolition or Relocation of Local Landmarks on sites located outside the H-D Historical District:**

- (1) Prior to submission of a permit application for the Relocation or Demolition of a Local Landmark, the applicant shall provide to the Department the following information, plans, photographs, and other supporting materials:
  - a. Certificate of Appropriateness Application in the form from time to time in effect
  - b. Copy of deed showing ownership of property
  - c. 4" x 6" (or larger) labeled photographs showing:
    - All sides of existing buildings and Structures
    - Site surrounding existing buildings or Structures
    - Adjacent Sites, buildings, and Structures including adjacent properties and across streets and rights of way
  - d. Scaled drawings indicating all proposed changes, as applicable:
    - Site plan, including adjacent Sites and buildings
    - Floor plans
    - All elevations (unless Demolition is applied for)
    - Details of all proposed work and new exterior elements (the latter, if applicable)
  - e. Samples or catalog cuts of any new materials to be used
  - f. Any additional information deemed necessary by the Planning Commission, in order to make a sound decision, after an initial consultation or review
  - g. A signed letter of authorization permitting a designated representative to present the project on behalf of the applicant, if applicable.
- (2) The Department shall notify the Board of Commissioners and Planning Commission that a complete application for a Certificate of Appropriateness for a Local Landmark has been filed with the Township. The Township shall notify the applicant of the time and place of the next Planning Commission meeting when the application will be discussed, which shall occur no less than forty (40) days after the Department has determined that the application is complete.

- (3) The applicant, or designated representative, must appear to explain and present the application to the Planning Commission. If the applicant, or designated representative, does not attend the scheduled meeting, the application shall be tabled and will be heard at the next regularly scheduled meeting of the Planning Commission. If the applicant, or designated representative, does not attend the second scheduled meeting, without prior consent and approval from the Director of the Department, the Planning Commission can recommend denial of the application.
- (4) In determining whether the preservation of the Local Landmark is feasible, in which case Demolition or Relocation will not be approved, the following factors, among such others as the Planning Commission deems appropriate, shall be considered:
- Whether the Local Landmark is representative of a specific period of significance that is integral to the Township's history.
  - Whether the Structure or Structures can be preserved by protecting its location from disturbance.
  - Whether measures, such as rehabilitation, reuse, or restoration, can result in preservation of the Structure or Structures.
  - Whether the steps necessary for Preservation of the Structure or Structures do not create an economic hardship.
  - Whether the measures taken to preserve the Structure or Structures are long-term in nature.

In determining whether Preservation of the Structure or Structures at another location is feasible, the following factors, among such others as the Planning Commission deems appropriate, shall be considered:

- Whether the Structure or Structures can be moved and still retain its historic significance.
  - Whether the Structure or structures are stable enough to permit relocation.
  - Whether it is feasible and practical to relocate the Structure or Structures without creating an economic hardship.
  - Whether relocation would result in the long-term preservation of the Structure or Structures.
- (5) The Planning Commission will review the application and evaluate the probable impact of the Demolition or Relocation of a Structure or Structures. The Demolition or Relocation will be considered based on the integrity of the Structure or Structures, the impact on the Sites immediately adjacent to the proposed Demolition or Relocation Site(s) and the impacts throughout the immediate neighborhood or area. The Planning Commission shall first consider whether Preservation of the

Structure or Structures in place is feasible, or failing that option, whether Preservation is feasible at another location.

- (6) The Planning Commission, on the basis of the information received at the meeting and from its general background and knowledge, shall indicate to the applicant the changes in plans and specifications, if any, which, in the opinion of the Planning Commission, would protect the distinctive historical character of the Local Landmark and justify the granting of a Certificate of Appropriateness. The applicant shall be granted the opportunity to work with the Planning Commission to find an appropriate use for the property, to help find a buyer for the property, or to obtain grant or loan funding to complete rehabilitation work.
- (7) Upon recommendation for approval or disapproval of the application by the Planning Commission, the application will be forwarded to the Publics Work Committee of the Board of Commissioners for review at its next regularly scheduled meeting. The Public Works Committee shall then submit to the Board of Commissioners in writing its recommendation concerning the issuance of a Certificate of Appropriateness authorizing a permit for the Demolition or Relocation.
- (8) If the Board of Commissioners disapproves the application for COA, it shall do so in writing, and copies shall be given to the applicant and to the Pennsylvania Historical and Museum Commission. The disapproval shall indicate what changes in the plans and specifications would meet the conditions for protecting the distinctive historical character of the Local Landmark. Upon receipt of the written disapproval of the Board of Commissioners, the Director of the Department shall disapprove the application for a building permit and so advise the applicant. The applicant may appeal the disapproval as provided by law.
- (9) The above required procedures pursuant to the granting of a permit for Demolition or Removal of a Local Landmark may be suspended in cases where the property has been determined to be imminently dangerous, as determined by the Department and the Fire Marshal. In the case of an imminently dangerous Local Landmark, the Department and the Fire Marshal shall first consider the use of barriers, bracing and/or other alternatives to razing the building or Structure. If time permits, the Department and the Fire Marshal shall consult with the Township Manager and, if feasible, the Board of Commissioners, in an emergency meeting. The Township shall be responsible for notifying all property owners on the same street within five hundred feet (500') of the designated site of the Demolition/Relocation application and all property owners not on the same street but within one hundred and fifty feet (150') of the designated site.

- (10) The Township will be responsible for notifying the Township Historical Commission at least thirty (30) days prior to public review of the application by the Planning Commission, so that the Commission may provide advisory comments regarding the application.

**§ 175-7. Time limitations.**

The Township shall have one hundred and twenty (120) calendar days to act on a complete application for a Certificate of Appropriateness, from the date the application is deemed complete by the Township including notification in writing of the pendency of the application to both the Board of Commissioners and the Planning Commission. If no action has been taken after one hundred and twenty (120) days, such application shall be deemed to have been approved; and the issuance of any permit dependent upon the Certification of Appropriateness shall be so authorized by the Township. This time limit may be waived or extended at any time by mutual consent of the applicant and the Board of Commissioners.

**§ 175-8. Expiration.**

Any Certificate of Appropriateness issued pursuant to the provisions of this Chapter shall expire twenty-four (24) months from the date of issuance, except that under the following circumstances the COA shall continue to be in effect:

- (1) the authorized work is commenced within said twenty-four (24) month time period and is continuing with reasonable diligence, and
- (2) an active building permit for the authorized work is on file with the Township.

**§ 175-9. Exceptions to Certificate of Appropriateness Procedure.**

In accordance with the procedures set forth in this Section, a COA is not required for the routine repair, maintenance or replacement in kind of any exterior elements or features of any building or Structure of any Local Landmark.

If the Director of the Department determines that the proposed work is routine repair or maintenance or replacement in kind, the applicant may then make application for a building permit where applicable. If the Director makes a determination that the proposed work constitutes Demolition, in whole or in part, or Relocation, the applicant shall be required to complete and submit a Certificate of Appropriateness application.

**§ 175-10. Documentation of Local Landmark Prior to Demolition or Relocation.**

If the Township issues a permit for the Demolition or Relocation, the Board of Commissioners shall require the applicant to provide documentation of the Local

Landmark proposed for Demolition. Such documentation may include photographs, floor plans, copies of deeds, scaled site plans, archeological survey, summary descriptions, maps, and any other comparable form of documentation stipulated by the Board of Commissioners, in order to provide a record of the property for future generations. Copies of documentation shall be provided to the Department, the Cheltenham Township Historical Commission, and to any other research institution or document repository deemed appropriate by the Board of Commissioners.

**§ 175-11. Demolition by Neglect.**

Demolition by neglect shall be a violation of the provisions of this Chapter and shall be subject to the violation provisions and penalties provided for in this Chapter. In addition, unoccupied buildings shall be tightly sealed, weatherproofed, fenced or otherwise protected, and their utilities shall be shut off for safety, violation of which shall be subject to the violation provisions and penalties provided for in this Chapter.

**§ 295-12. Violations and Penalties.**

Any person, partnership, corporation, unincorporated association or other entity who or which shall violate any of the provisions of this Chapter shall upon adjudication thereof in a civil enforcement proceeding commenced by the Township be subject to a civil penalty not to exceed \$600 per violation, plus costs of prosecution. Each day that such violation shall occur shall constitute a separate violation.

**SECTION 2. Disclaimer.** Nothing in this Ordinance or in the Code of the Township of Cheltenham shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued or any cause or causes of action existing under the said Code prior to the adoption of this amendment.

**SECTION 3. Ratification.** In all other respects, the Code of the Township of Cheltenham, Chapter 295, entitled "Zoning," is hereby ratified and reaffirmed except where the same is inconsistent with the provisions contained in this Ordinance.

**SECTION 4. Severability.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision thereof shall be held illegal, invalid or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Cheltenham Township Board of Commissioners that this Ordinance would have been adopted if such legal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

**SECTION 5. Failure to Enforce Not a Waiver.** The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**SECTION 6. Repealer.** Except as otherwise expressly provided herein, any Ordinance or any part of any Ordinance conflicting with the provisions of this Ordinance shall be deemed and the same are hereby repealed to the extent of such conflict.

**SECTION 7. Effective Date.** This Ordinance shall take effect and be in force from and after it is approved as required by law.

**ENACTED** into an **ORDINANCE** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**TOWNSHIP OF CHELTENHAM  
BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
Harvey Portner, President

ATTEST: \_\_\_\_\_  
Bryan T. Havir, Township Manager  
and Secretary

**BOARD OF COMMISSIONERS  
CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. - \_\_\_\_\_**

**AN ORDINANCE AMENDING THE CHELTENHAM TOWNSHIP CODE, SUBDIVISION AND LAND DEVELOPMENT (CHAPTER 260) TO ADD PROCEDURES FOR DEVELOPMENT ACTIVITY IN THE M4-HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT IN ADDITION TO THE STANDARD SUBDIVISION AND LAND DEVELOPMENT PROCESS SUBMISSIONS INCLUDING, BUT NOT LIMITED TO, THE REQUIREMENT OF SUBMISSION OF A MASTER PLAN OF THE DEVELOPMENT; SETTING FORTH THE ELEMENTS TO BE INCLUDED IN SUCH A MASTER PLAN; AND SETTING FORTH THE STANDARD FOR APPROVAL OF SUCH A MASTER PLAN.**

The Board of Commissioners of Cheltenham Township does hereby **ENACT** and **ORDAIN:**

**SECTION 1. – AMENDMENT TO CODE**

The Code of the Township of Cheltenham, Chapter 260 (Subdivision and Land Development) is hereby amended to add the following:

**Article IX**

**ADDITIONAL PROCEDURES FOR DEVELOPMENT ACTIVITY IN THE M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT**

**§ 260-54 Additional Procedures For Development Activity in the M4 Zoning District**

A. Prior to any construction or demolition in the M4 District, in addition to the standard subdivision and land development submissions, the developer of such proposed construction/demolition shall submit to the Township Building and Zoning Department and to the Board of Commissioners a master plan of the development under the provisions of this Chapter and Article XXXIV of the Zoning Ordinance, setting forth in sufficient detail so as to be able to determine if the plan(s) are in compliance with the Ordinance provisions of the M4 Zoning District and the other applicable zoning provisions including, but not limited to the following: (1) the construction/demolition planned on the tract proposed to be developed, (2) the common development scheme of the lot, (3) the quantity and type of all proposed buildings, structures and

uses proposed, including Multiple Dwelling units, and non-Multiple Dwelling uses, the proposed locations of buildings and/or structures, the historic character and details of the Historic Resource(s) preserved/to be preserved as set forth in Article XXXIV and other applicable provisions of the Zoning Ordinance, the heights, elevations and architectural style, proposed driveways, parking areas and ingress and egress for the entire tract and each building to be preserved, sufficient to demonstrate, among other things, whether the provisions of Article XXXIV of the Zoning Ordinance are satisfied.

B. As part of the master planning process, prior to the approval of any master plan, and any revised master plan, the applicant shall provide a certified metes and bounds survey for the entire property which is the subject of the plan or revised plan, setting forth among such other details as the Board of Commissioners may require, (a) the footprint of all of the structures to remain on, or planned to be constructed on the property, whether or not attached to any other structure, (b) the location of the 10-foot landscaped perimeter (setting forth any areas which may have been allowed by the Board of Commissioners to remain as existing landscape), (c) the twenty-five percent (25%) of the property which will be maintained as landscaped open space, (d) the balance of the property which will remain as pervious surface (but not less than the additional 20% required to be pervious surface in an M4 District), (e) the view sheds (which may be part of (b), (c) or (d), and (f) the pedestrian trail(s). The survey shall be recorded as part of the approved subdivision and/or land development plan.

C. The subdivision and/or land development plan for the lot shall conform to the master plan submitted pursuant to A. above. The developer shall submit a revised master plan if any changes are proposed to the submitted master plan which shall be reviewed by the Township Building and Zoning Department for compliance with the provisions of Article XXXIV and other applicable provisions of the Zoning Ordinance. The Township Planning Commission, Shade Tree Advisory Commission and any other Township advisory committee given the right to comment on the subdivision and/or land development plan by the Board of Commissioners, shall also receive the master plan and revised master plans for review and comment.

D. A revised master plan shall be submitted to the Board of Commissioners at the same time that a revised subdivision and/or land development plan is submitted that does not conform to a previously approved master plan. The developer shall coordinate any changes to a previously approved master plan with any subsequent subdivision and/or land development plans.

E. The Board of Commissioners shall render a decision approving or denying approval of the master plan or revised master plan within ninety (90) days after the date of its first regular meeting after the date the master plan or revised master plan is submitted, unless an extension is granted by the developer.

#### §260-55 Pedestrian Trail(s)

In addition to any sidewalk requirements, and not as a substitute, pedestrian trails are required in all subdivisions and land developments in the M4 Zoning District in locations as determined by the Board of Commissioners. The minimum width of all pedestrian trails shall be

eight feet. Pedestrian trails shall not exceed a grade of 7% except as other required by applicable ADA regulations and standards, as amended. Steps or a combination of steps and ramps shall be utilized to maintain maximum grades, where necessary. Where a pedestrian trail grade exceeds 5%, a non-slip surface texture shall be used.

**SECTION 2. - DISCLAIMER**

Nothing in this Ordinance shall limit, in any manner whatsoever, the Township's right to enforce any ordinance or law of the Township of Cheltenham, County of Montgomery or Commonwealth of Pennsylvania. Nothing in this Ordinance shall be a defense of any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

**SECTION 3. - SEVERABILITY**

The provisions of this Ordinance are severable, and if any Section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid, or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired thereby.

**SECTION 4. - REPEALER**

Any ordinance or part of any Ordinance conflicting with the provisions of this Ordinance shall be deemed and the same are hereby repealed to the extent of such conflict.

**SECTION 5. – FAILURE TO ENFORCE NOT A WAIVER**

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**SECTION 6. – EFFECTIVE DATE**

This Ordinance shall take effect and be in force as soon after adoption as is permitted by law.

**ORDAINED AND ENACTED** by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CHELTENHAM TOWNSHIP**

By: \_\_\_\_\_  
**Harvey Portner, President,**  
**Board of Commissioners**

Attest: \_\_\_\_\_  
**Bryan T. Havar, Township Secretary**

**BOARD OF COMMISSIONERS  
CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. - \_\_\_\_\_**

**AN ORDINANCE AMENDING THE CHELTENHAM TOWNSHIP  
ZONING CODE TO PROVIDE FOR THE ADAPTIVE RE-USE OF  
HISTORIC RESOURCES TO AVOID OBSOLESCENCE OF SUCH  
STRUCTURES AND RESULTING DETERIORATION AND  
DESTRUCTION; TO PROVIDE USE REGULATIONS FOR SUCH  
ADAPTIVE RE-USE IN TERMS OF SPECIFIC COMMERCIAL AND  
MULTIPLE DWELLING USES; PROVIDING FOR THE  
PRESERVATION OF HISTORIC RESOURCES AND PORTIONS  
THEREOF; AND PROVIDING FOR DIMENSIONAL, PARKING AND  
VIEW SHED REGULATIONS; PROVIDING FOR A TRAFFIC  
IMPACT STUDY**

The Board of Commissioners of Cheltenham Township does hereby **ENACT** and  
**ORDAIN:**

**SECTION 1. – AMENDMENT TO CODE**

The Code of the Township of Cheltenham, Chapter 295 (Zoning), is hereby amended to  
add the following:

Article XXXV

**M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER  
MULTIPLE USES DISTRICT**

§295 - 255 Purpose.

The purpose of the M4 Zoning District is to promote and provide for the adaptive re-use of buildings that are historic resources and of properties with significant character, uses and development patterns that might otherwise be obsolete and be likely to deteriorate or be demolished due to obsolescence or other reasons; to preserve and promote the use of such historic resources and other land and buildings for cultural and artistic purposes; and to provide for such development in a manner that integrates new development and adaptive re-use into an existing community, transitions between lower and higher density uses, and accomplishes such

goals by allowing a mix of compatible uses that provide for community-benefitting services as well as a variety of living opportunities.

§295 - 256 Applicable Regulations.

In the M4 Historic Preservation, Cultural and Artistic Use, and Other Multiple Uses District the regulations contained in this Article shall apply. Article XXIV Preservation Overlay District of this Zoning Ordinance shall not apply in the M4 District. Existing and future historical preservation and local landmark ordinances shall not apply in the M4 District, unless the Ordinance expressly states that it applies in the M4 District.

§295- 257 Additional Definitions

For the purposes of this Article, the following additional definitions shall apply:

Building coverage shall mean the ratio of the building area on a lot to the developable acreage of the lot

Impervious coverage shall mean the ratio of the area of all portions of a lot covered in any way including, but not limited to, buildings, parking areas, porches, pathways, walkways, patio, seating areas, and coverings over pervious surfaces, so as to not allow the ground beneath to absorb water at the natural rate of sodded land, to the developable area of the lot.

§295-258 Use Regulations

A building may be erected, altered or used, and a lot or premises may be used, for the following purposes and no others and more than one of the uses described below is permitted on the same lot or within the same building provided that compliance with both of the following Paragraphs A and B occurs for any development under this Article, regardless of whether development of Multiple Dwellings under Paragraph C is proposed or exists:

- A. All of the lot(s) under common ownership which contain Historic Resources (as defined in Section 295-2 provided, however, for purposes of this Zoning District, the term "Historic Resources" shall refer only to those Historic Resources that are buildings or portions of buildings constructed prior to 1932) shall be subjected to a deed restriction at the time of recording of the land development plan for development of the lot according to this Article, with terms written to the satisfaction of the Township Solicitor, recorded against the lot(s) stating that the pre-1932 facades, rooflines, and interiors of the Historic Resource(s) shall be preserved in perpetuity in their current or better state of repair, including but not limited to pre-1932 facades, rooflines and interiors, as further defined below, except as otherwise provided in this Article. For the purposes of this Article, the terms "interior" and "interiors" shall mean only the entrance halls, lobbies, and foyers on the first, main floors of the Historic Resources, as well as the staircases accessing such areas.

B. The use of lot(s) in the M4 District shall include, at a minimum, two (2) of the following uses and those uses shall occupy, when aggregated, at least three thousand (3,000) square feet of floor space dedicated exclusively to: auditorium, studio(s), and/or performance and exhibition space for dance, art, music, photography and other arts and media, for educational, cultural, artistic and community purposes.

C. 1. Notwithstanding anything herein to the contrary, there shall be no more than two hundred and fifty (250) units of Multiple Dwellings per tract held in common ownership at the date of establishment of the M4 District. Multiple Dwellings are permitted in the M4 District subject to a maximum density of eight (8) dwelling units for each one (1) acre of Developable Acreage but in the aggregate no more than such two hundred fifty (250) units of Multiple Dwellings per tract held in common ownership at the date of establishment of the M4 District, subject further to subsections 1.a., 1.b., 1.c. below and the reduction in units of Multiple Dwellings in accordance with subsection D.4. below:

a. In order to facilitate the historic preservation, cultural and artistic use, and other multiple use purpose of this M4 District the following shall apply:

(i) Multiple Dwellings are permitted only as part of a common land development plan of contiguous land in the M4 District submitted in the form of a master plan (see Section 295-258.E.5, below and Article IX of the Subdivision and Land Development Ordinance) meeting the requirements of Paragraphs A and B above and the other requirements of this Article, which includes (by depiction in the master plan) proposed development of non-Multiple Dwelling uses as permitted in the M4 District as well as all Multiple Dwelling uses intended to be developed on the tract held in common ownership at the date of establishment of the M4 District;

(ii) Multiple Dwellings shall be approved only as part of a common land development plan of contiguous land which also includes preservation of at least two buildings that are Historic Resources which shall be the two largest and/or most historically significant buildings that are Historic Resources if there are more than two within the area of contiguous land that is part of the common land development plan, or the preservation of only one (1) building which is an Historic Resource if the tract only contains one (1) building; and

(iii) The calculated density of Multiple Dwellings per one (1) acre of Developable Acreage shall not be reduced by the presence of

non-residential buildings or uses (including but not limited to hotels) within the same lot, though the lot shall be required to comply with the minimum lot area, Building Coverage and Impervious Coverage limitations applicable in the M4 District, provided, however, that for each two (2) units (whether single rooms or suites) in a hotel or apartment hotel the Multiple Dwelling density calculation shall be reduced by one (1) unit.

(iv) The units of Multiple Dwellings permitted by this Article shall be not more than 1, 2 or 3-bedrooms, with the 3-bedroom dwelling units comprising no more than 5% of the total number of dwelling units in a building.

b. Preservation of an Historic Resource within the meaning of this Article shall be deemed to have occurred even if any of the following circumstances exist or are proposed: (a) any portion of the Historic Resource is, or is proposed to be, demolished which was added after 1932; (b) the building that is an Historic Resource is demolished after at least seventy-five percent (75%) of the Historic Resource is lost due to, or is duly ordered to be demolished following, a fire or other casualty loss; (c) the building that is an Historic Resource can reasonably be demonstrated to be substantially deteriorated or structurally compromised at the date of adoption of the ordinance applying the M4 Zoning District to the Historic Resource to such a degree that it would create an unreasonable financial hardship to restore the building, in which case the building may either be demolished or restored to economic usefulness without preservation of its historic features, provided that this exception shall not apply to the building (or two if there are two or more) which caused the designation as an Historic Resource; (d) in order to allow for building additions and adaptation to modern uses and needs no more than two facades that are most architecturally significant and prominently visible from a public street, and including the same façade from which the public view is to be protected pursuant to Section 295-265 below, must retain their/its historical architectural appearance; or (e) additions or alterations may be made even to protected facades in order to accommodate modern uses and the needs of owners and guests such as, but not limited to, doors and awnings, lights and signs (the latter two subject to all lighting and sign requirements of the Zoning Ordinance and the Subdivision and Land Development Ordinance) so long as such addition or alterations are historically relevant and impact the historic features as minimally as reasonably feasible.

c. In buildings which contain or are attached to Multiple Dwellings, or on the same lot as Multiple Dwellings, the following shall, as examples and not for limitation, be considered permitted "accessory uses":

commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop, restaurant, and tailor shop.

d. "Common ownership" shall mean ownership by the same persons or entities, or directly or indirectly by persons or entities which are affiliates of one another and/or under common control by legal structure or by agreement, and all successors and assigns thereof or purchasers or transferees therefrom, by agreement or operation of law. Ownership of percentage interests in an entity that do not constitute control of that entity shall not alone constitute common ownership, but ownership of a controlling equity interest, or contractual management control, in a controlling entity such as the general partner of a limited partnership, or contractual control by an individual or by minority interests having management authority under the organizational documents of an entity such as the operating agreement of a limited liability company, or common control under any other contractual relationship such as a management contract, shall be common ownership. "Ownership" shall include leasehold interests and shall include the right to ownership under an agreement of sale or option agreement.

D. The following uses in a single building (whether or not a separate building with only that use or uses), more than one use in a building or in multiple buildings, including in hotels and apartment hotels as set forth in Section D.4. below, or not in a building, are permitted:

1. Restaurant, tea room, bar or tavern; brewery or distillery when associated with operation of a restaurant, bar or tavern on the premises.
2. Health and wellness clinic, but not including drug dispensary, which incorporates elements such as: outpatient medical or chiropractic treatment or therapy, exercise and physical rehabilitation, outpatient diagnostic or health screening procedures and testing, dietary consultation, and preventive medicine services.
3. Fitness center which incorporates a gym or similar exercise facility and which may also include, among other facilities, a swimming pool, spa, and offices or other rooms for providing fitness, dietary and wellness treatments or consultation.
4. Apartment hotel lodging up to eighteen (18) units per acre or hotel lodging up to thirty-two (32) units per acre but in no event more than 250 units in the aggregate per tract, defined as all contiguous lots in common ownership at the date this District is established. In a building containing or attached to an apartment hotel or hotel, or on the same lot, the following shall be permitted "accessory uses": conference center, event hall

(including wedding receptions and similar events), restaurant, bar, tea room, tavern, retail goods store, studio, personal service shop, bank, financial institution, commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop and tailor shop, and the uses in 295-258.D.5 below. The total number of Multiple Dwelling units, hotel rooms and apartment hotel bedrooms, on the tract described in this paragraph, shall be a maximum of five hundred (500) less the number of Multiple Dwelling units required to be deducted due to the calculation under Section 295-258 C.1.a. (iii) above from the maximum number of Multiple Dwellings units (250 or less, as applicable). For example, if there are 40 acres of developable acreage on the tract held in common ownership at the date of establishment of the M4 District, at 8 units per acre of developable acreage, a maximum of 250 units would be allowed subject to the calculation pursuant to Section 295-258.C.1.a.(iii) above. If fifty (50) hotel units are proposed by the developer, then pursuant to Section 295-258.C.1.a.(iii), the number of Multiple Dwelling units permitted on the tract held in common ownership at the date of establishment of the M4 District would be reduced by one (1) unit for each two (2) hotel units, resulting in a maximum number of Multiple Dwelling units of 225 units with 50 hotel units.

5. Auditoriums, studios, and performance and exhibition spaces for dance, art, music, photography and other arts and media, for educational, exhibition, conference and/or performance purposes.
6. Bakery or confectionery shop for the production of articles to be sold at retail on the premises of the shop or in the hotel or apartment hotel.
7. Offices related to or serving any other permitted use in this District.
8. Public gardens for exhibition or community gardening use; or farmer's market defined as the seasonal selling or offering for sale at retail of vegetables or produce, flowers, home-produced or studio-produced arts and crafts, orchard products, and similar non-animal agricultural products, occurring in a predesignated area, where the vendors are individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale and subject to any further regulations or ordinances adopted by the Township Board of Commissioners regulating what may be sold, hours and days of operation, responsibilities for cleanup, and zones for farmer's markets could be located in relation to residential uses.
9. Amphitheater, located not closer than two hundred (200) feet to any residential use, when authorized by a special exception.

10. In addition to any other accessory use expressly permitted in this District, any accessory use on the same lot with and customarily incidental to any of the above permitted uses.
  11. Any use of the same general character as any of the uses hereinbefore specifically permitted when authorized as a special exception but not to include any use permitted only in a less restricted district.
- E. The following shall be allowed in connection with preservation of Historic Resources:
1. the interior of each building which is an Historic Resource may be reasonably but not substantially altered (cleaning, repair, restoration, upgrading or enhancement of the existing character of the interior of an Historic Resource shall not be considered to be an alteration and shall be permitted);
  2. the applicant may make any and all alterations to the Historic Resource required by the Americans With Disabilities Act, the Pennsylvania Fire and Panic Act, the Township Fire Code and all other required fire and public safety codes, statutes, ordinances and regulations;
  3. the applicant may modernize HVAC, plumbing, electrical and mechanical equipment as well as all interior alterations reasonably necessary to accomplish same;
  4. in each of 1., 2. and/or 3., the applicant shall use all reasonably practicable efforts to preserve the historic character and details of the exterior and interior of the building or buildings which are Historic Resources; and
  5. the applicant shall include a depiction of the resulting historic character and details of the exterior and interior of the building or buildings which are Historic Resources in the master plan and/or revised master plans referred to in Section 295-258.C.1.a.(i) and in Article IX of the SALDO.

§ 295-259 Lot area and lot width.

A lot area of not less than twenty-five thousand (25,000) square feet and a lot width of not less than one hundred fifty (150) feet at the street line and extending for that width from the street line to the depth of the rear yard shall be provided for every building hereafter erected, altered or used in the M4 District.

§ 295-260 Building Coverage and Impervious Coverage.

- A. The Building Coverage shall not exceed twenty percent (20%) of the Developable Acreage of the lot.
- B. Impervious Coverage shall not exceed fifty five percent (55%) of the Developable Area of the lot.
- C. Building Coverage and Impervious Coverage in the Multiple Use District may be calculated based on the Developable Acreage of contiguous lots under common ownership within the M4 District, but not if the lot is separated by a public street.

§ 295-261 Yard regulations.

A. Front yard.

1. There shall be a front yard, the depth of which shall be at least eighty (80) feet, provided that, in the case of a lot extending through from one street to another, the street lines of which are not more than one hundred fifty (150) feet apart, the depth of the front yard on the rear street line may be decreased with approval of the subdivision or land development plan. Vehicular parking shall not be permitted within fifteen (15) feet of any street line.

2. In the case of a corner lot, a front yard as provided for in Subsection A(1) shall be required on each street on which the lot abuts, provided that, in the case of a corner lot held in single and separate ownership at the effective date of this chapter of a width less than one hundred (100) feet, the depth of the front yard on the long side may be decreased with approval of the subdivision or land development plan.

B. Side yards. There shall be two side yards, one on each side of the principal building, each at least eighty (80) feet wide.

C. Rear yard. There shall be a rear yard, the depth of which shall be at least eighty (80) feet.

D. Lots greater than ten (10) acres in area shall be exempt from the requirements of subsections A., B. and C. of this Section but shall be required to maintain a setback distance of eighty (80) feet between any building on such lot and the ultimate right-of-way line of any public street and between any building on such lot and the boundary of an adjoining lot.

§ 295-262 Green area and Open Space.

A green area and open space, perpetually landscaped and maintained, shall be required (“open space”). This area of the open space shall be not less than twenty five percent

(25%) of the lot area and shall include a landscaped buffer strip at least ten (10) feet wide abutting the entire perimeter of the lot, excluding driveways for ingress. The open space may be calculated based on the area of contiguous lots under common ownership within the M4 District, or a common development plan under common ownership within the M4 District at the time of application under the subdivision and land development process, excluding areas and lots separated by a public street. The landscaped buffer requirement in perimeter locations may be deemed to be satisfied by existing conditions where the distance between a proposed building and the applicable perimeter is more than one hundred fifty (150) linear feet or if the purpose of a buffer is effectively accomplished by existing trees or other existing landscaping. The open space shall remain green and open in perpetuity and the owner shall enter into such covenants, deed restrictions, maintenance obligations, and/or other written obligations, to the approval of the Township Solicitor, so as to assure that such open space shall perpetually remain green and open in accordance with the requirements of subsection B. of Section 260-54 of Article IX of the Subdivision and Land Development Ordinance.

§ 295-263 Building height.

A building located within one hundred (100) feet of any street line may not exceed three (3) stories and thirty six (36) feet in height and a building located more than one hundred feet (100) feet from any street line may not exceed four (4) stories and forty-eight (48) feet in height; except that portions of additions to buildings that are a Historic Resource having an aggregate building footprint up to one hundred fifty percent (150%) of the building footprint of the Historic Resource (at the date of establishment of the M4 District including any portion of the building constructed after the year 1932) to which the addition is attached may exceed the height and story restrictions of this Section and may extend up to the same building height as the Historic Resource though no more than two (2) additions of such building height shall be permitted on each Historic Resource, and in no event may any portion of such addition be within eighty (80) feet of any street line.

§ 295-264 Parking.

The following off-street parking requirements shall apply in the M4 District:

- A. There shall be two (2) off-street parking spaces provided for every residential dwelling unit.
- B. There shall be one (1) off-street parking space provided for every rental unit for hotels, apartment hotels and motels.
- C. There shall be one (1) off-street parking space provided for every two hundred fifty (250) square feet of gross floor area of uses set forth in Section 295-258.D.4.-12. (except hotels, apartment hotels or motels for which immediately

preceding Paragraph B. is applicable), including, but not limited to, accessory uses.

- D. There shall be one (1) off-street parking space provided for every three hundred (300) square feet of gross floor area of all other uses permitted in the M4 District not enumerated above.
- E. At least fifty percent (50%) of the off-street parking spaces shall be underground parking.
- F. There shall be no parking garages with parking spaces above the ground level unless
  1. all exterior garage walls are at least one hundred fifty (150) feet from all public streets and
  2. all exterior façades directly visible from a public street and not shielded from view by other buildings are designed and constructed to appear generally consistent with the character and aesthetics of the Historic Resources.
- G. No parking on perimeter streets surrounding the tract shall count toward the required parking.

§ 295-265 View shed.

No buildings or additions to buildings shall be erected, or new landscaping shall be installed, such that the view from a public street to the primary façade of an Historic Resource is materially impaired; provided that if that primary façade can be viewed directly from more than one street or if there is more than one façade that is primary, then this restriction shall apply only to the view from one street to one façade which is determined by the Board of Commissioners to be the primary façade.

§295-266 Traffic Impact

A traffic impact study shall be required for any hotel, apartment hotel, event facility, conversion of a Historic Resource for any use permitted in the M4 District or for Multiple Dwellings in order to determine the impact of the proposed use and offer solutions to mitigate the potential negative impacts, if any, of the proposed use or uses. The traffic impact study shall be prepared by a qualified traffic engineer who possesses the credentials outlined for a Municipal Traffic Engineer as defined in Pennsylvania Code Chapter 612, as amended from time to time, entitled "A Municipal Traffic Engineering Certification". The applicant shall pay all costs associated with preparation and submission of the study.

- A. The study must demonstrate that the proposed use will not adversely affect the surrounding areas or traffic circulation generally in the Township; or else identify any traffic

problems that might be caused or aggravated by the proposed use or uses and delineate solutions to those problems. Based upon the findings of the study the Township may require other improvements both onsite and offsite, which would alleviate hazardous or congested situations directly attributable to the proposed development.

B. The traffic impact study shall include an analysis of all significant intersections within the study area extending to a minimum of one-half mile from the boundary on all roads which the traffic generated by the proposed development would be reasonably expected to utilize. Intersections greater than one-half mile away shall also be studied if deemed necessary by the Township Engineer. The traffic study shall also include an analysis of existing and proposed sidewalks and pedestrian trails.

§ 295-267 Additional Procedures

See Article IX of the Cheltenham Township Subdivision and Land Development Ordinance.

**SECTION 2. - DISCLAIMER**

Nothing in this Ordinance shall limit, in any manner whatsoever, the Township's right to enforce any ordinance or law of the Township of Cheltenham, County of Montgomery or Commonwealth of Pennsylvania. Nothing in this Ordinance shall be a defense of any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

**SECTION 3. - SEVERABILITY**

The provisions of this Ordinance are severable, and if any Section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid, or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired thereby.

**SECTION 4. - REPEALER**

Any ordinance or part of any Ordinance conflicting with the provisions of this Ordinance shall be deemed and the same are hereby repealed to the extent of such conflict.

**SECTION 5. - FAILURE TO ENFORCE NOT A WAIVER**

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**SECTION 6. – EFFECTIVE DATE**

This Ordinance shall take effect and be in force as soon after adoption as is permitted by law.

**ORDAINED AND ENACTED** by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CHELTENHAM TOWNSHIP**

By: \_\_\_\_\_  
**Harvey Portner, President,**  
**Board of Commissioners**

Attest: \_\_\_\_\_  
**Bryan T. Havar, Township Secretary**

**BOARD OF COMMISSIONERS  
CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. - \_\_\_\_\_**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF  
CHELTENHAM TOWNSHIP TO REZONE 1750 ASHBOURNE ROAD AND  
CERTAIN ADJOINING PARCELS UNDER COMMON OWNERSHIP TO "M4"**

The Board of Commissioners of Cheltenham Township does hereby **ENACT** and **ORDAIN**:

**SECTION I. - Amendment to the Official Zoning Map of Cheltenham Township**

The Cheltenham Township Zoning Map is hereby amended to rezone 1750 Ashbourne Road bounded by Ashbourne Road, Penrose Avenue (partially), Beech Avenue, Sycamore Avenue and Juniper Avenue, owned by the Dominican Congregation of St. Catherine Dericci, further identified as Tax Block 1185C, Units 1T, 1E and 2, Montgomery County Tax Parcel Nos. 31-000-1222-007, 31-000-1846-004 and 31-002-5888-001, which tract consists of 45.32± acres and are particularly described in the legal description attached hereto as Exhibit "A", from the existing zoning classification of R-2 to the new classification and district of "M4".

**SECTION II. - Severability**

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted even if such

illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

**SECTION III. - Failure to Enforce not a Waiver**

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**SECTION IV. - Effective Date**

This Ordinance shall take effect and be in force from and after its approval as required by the law.

**SECTION V. - Repealer**

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

**ORDAINED AND ENACTED** by the Board of Supervisors of Cheltenham Township, Montgomery County, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CHELtenham TOWNSHIP**

By: \_\_\_\_\_  
**Harvey Portner, President,  
Board of Commissioners**

Attest: \_\_\_\_\_  
**Bryan T. Havir, Township Secretary**

ALL THAT CERTAIN lot or piece of ground, Situate in Cheltenham, Montgomery County, Pennsylvania, with the buildings and improvements thereon erected, tenements and hereditaments thereto appertaining.

BEGINNING at a point in the intersection of the center lines of Sycamore Avenue and Beech Avenue (each 50 feet wide) thence extending along the center line of Beech Avenue North forty four degrees forty five minutes West seven hundred and ninety five and thirty six one-hundredths feet to a point in the intersection of the center line of Beech Avenue and a drive (15 feet wide) thence along the center line of the above mentioned drive the five following courses and distances:- North forty five degrees thirty three minutes East five hundred and thirty five and fifteen one-hundredths feet; North forty eight degrees forty eight minutes East one hundred feet; North fifty seven degrees forty five minutes twenty four seconds East fifty five and two tenths feet; North seventy one degrees thirty three minutes East ninety and fifty five one-hundredths feet and North fifty five degrees fifty four minutes East eighty and twenty two one hundredths feet to a point; thence North forty four degrees fifty minutes thirty nine seconds West fifty five and sixty six one hundredths feet to a point, a corner of land of George W. Elkins Jr.; thence by the same North forty five degrees fifty five minutes thirty four seconds East eleven hundred and ninety six and seventy nine one hundredths feet to a point in the center line of Ashbourne Road (formerly called Cheltenham Avenue), thence along the center line of Ashbourne Road South thirty seven degrees one minute East three hundred and forty three and forty-six one hundredths feet to a point in the intersection of the center lines of Ashbourne Road and Juniper Avenue (40 feet wide) thence along the center line of Juniper Avenue Southwestwardly by various courses sixteen hundred and ninety nine feet more or less to a point in the intersection of the center line of Juniper Avenue and Sycamore Avenue; thence along the center line of Sycamore Avenue South forty five degrees sixteen minutes West six hundred and ten and eighty seven one hundredths feet to the place of beginning.

ALL THAT CERTAIN lot or piece of ground with the messuage or tenement thereon erected, situate in Cheltenham Township, Montgomery County, Pennsylvania, and described according to a Survey made by Charles F. Mebus, dated April 17th, 1937, as follows, to wit:

BEGINNING at the point of intersection which the bed of Penrose Avenue makes with the bed of Ashbourne Road; thence along the bed of Ashbourne Road South fifty-five degrees, twenty minutes, thirty-five seconds East two hundred twelve and seventy-one one-hundredths feet to a point, the said point being an angle in Ashbourne Road; thence along the same South seventy-one degrees, forty-seven minutes, thirty-five seconds East four hundred four and twenty-four one hundredths feet to an angle point in Ashbourne Road; thence by the same South thirty seven degrees, eighteen minutes, twenty seconds East fifty-two and three one-hundredths feet to a point in the bed of the said Ashbourne Road, the said point being a corner of Land of the Dominican House of Retreats and Catholic Guild; thence along the land of the same South forty-five degrees, fifty-five minutes, eighteen seconds West one thousand one hundred ninety-eight and fifty-six one hundredths feet to a point, the said point being a corner of said land and land of the Temple University; thence along the said land of the Temple University North forty-four degrees, forty-three minutes, two seconds West four hundred ninety-five and ninety-five one hundredths feet to a point in the bed of Penrose Avenue; thence along the bed of Penrose Avenue the following thirteen courses and distances, North forty-five degrees, sixteen minutes, fifty-five seconds East, two hundred ninety-seven and eighty-nine one-hundredths feet to an angle point; thence North thirty-four degrees, six minutes, twenty-five seconds East fifty-six feet to an angle point; thence North four degrees, fifty-one minutes, ten seconds East fifty-six feet to an angle point; thence North nineteen degrees, forty-one minutes, fifty seconds West one hundred ten feet to an angle point; thence North no degrees, twenty-five minutes, thirty-two seconds East thirty-seven and ninety one hundredths feet to an angle point; thence North seventeen degrees, six minutes, forty-eight seconds East thirty-seven and ninety one hundredths feet to an angle point; thence North thirty degrees, twelve minutes, forty seconds East seventy-five feet to an angle point; thence North forty-two degrees, forty minutes, forty seconds East seventy-five feet to an

angle point; thence North fifty-four degrees, thirty-one minutes, forty seconds East seventy-five feet to an angle point; thence North seventy degrees, nineteen minutes, forty seconds East seventy-five feet to an angle point; thence North seventy-two degrees, fifty-four minutes, forty seconds East seventy-five feet to an angle point; thence North sixty-one degrees, fifty-one minutes, forty seconds East seventy-five feet to an angle point; thence North forty-eight degrees, forty-four minutes, twenty-five seconds East fifty-two and seventeen one hundredths feet to the place of beginning.

BEING known as 1750 Ashbourne Road; Beech Avenue and Sycamore Avenue.

BEING Tax Parcel Nos. 310001222007; 310001846004 and 310025888001.